

SUPREME COURT. U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1969

No. 295

BOHR AIRCRAFT CORPORATION, APPELLANT,

vs.

**COUNTY OF SAN DIEGO, A BODY CORPORATE, AND
CITY OF CHULA VISTA, A MUNICIPAL CORPO-
RATION.**

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED AUGUST 19, 1969

JURISDICTION POSTPONED OCTOBER 19, 1969

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**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
SAN DIEGO**

No. 200839

**ROHR AIRCRAFT CORPORATION, a California corporation,
Plaintiff,**

VS.

**COUNTY OF SAN DIEGO, a body corporate, and CITY OF
CHULA VISTA, a Municipal corporation, Defendants.**

COMPLAINT FOR REFUND OF TAXES—Filed October 14, 1955

Comes now the plaintiff, Rohr Aircraft Corporation, and for cause of action against defendants, alleges as follows:

I

Plaintiff is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California.

II

Defendant County of San Diego is now, and at all times mentioned herein was, a body corporate and politic of and within the State of California, duly organized and existing under the laws of said state.

III

Defendant City of Chula Vista is now, and at all times mentioned herein was, a Municipal corporation, duly organized and existing under the laws of the State of California.

IV

Under the terms of a lease dated September 1, 1949, with [fol. 2] the United States of America acting by and through the General Services Administrator, plaintiff as Lessee was required to pay to the proper authority when due all taxes, assessments and similar charges which might be taxed, assessed or imposed upon the Lessor or Lessee with respect to the leased premises and personal property located on said premises, or any part thereof, or upon the occupier thereof, or upon the use or operation of the leased premises and personal property.

V

Said leased premises were and are located in the County of San Diego, State of California, and are within the City of Chula Vista, Chula Vista School District, San Diego County Water Authority, and the Metropolitan Water District of Southern California, and are described in the copy of said lease attached hereto as Exhibit "A".

VI

At all times mentioned herein plaintiff has occupied said premises under said lease and has complied with all of the terms and conditions of said lease.

VII

On May 29, 1946, said leased premises were declared surplus property under the Surplus Property Act of 1944, 58 Stat. 765, 50 USCA Appendix, Sec. 1161 et seq., and acting under said Act the U. S. War Assets Administration accepted responsibility for said property.

VIII

At all times subsequent to May 29, 1946, the said property was immune from taxation by State, County, Municipal, or local authorities, said immunity being provided by the Constitution and laws of the United States and of the State of California.

IX

Notwithstanding the fact that said property was on Monday, March 5, 1951, owned by the United States and notwithstanding the Constitution and laws of the United States and of the State of California, the County Assessor of San Diego County assessed against said property and [fol. 3] improvements thereon county and district assessments for the year 1951, and thereafter the Board of Supervisors of said county levied county and district taxes thereon for the fiscal year 1951-1952, and thereafter said taxes were computed and entered upon the assessment roll of said County of San Diego, as a tax and lien upon and against said property. Copies of the tax bills for said assessment and tax are filed herewith as Exhibit "B".

X

Thereafter on April 16, 1952, plaintiff paid said taxes to the Tax Collector of San Diego County as required by said lease, as shown by Exhibit "B", amounting to \$18,609.30.

XI

Notwithstanding the fact that said property was on Monday, March 3, 1952, owned by the United States and notwithstanding the Constitution and laws of the United States and of the State of California, the County Assessor of San Diego County assessed against said property and improvements thereon county and district assessments for the year 1952, and thereafter the Board of Supervisors of said county levied county and district taxes thereon for the fiscal year 1952-1953, and thereafter said taxes were computed and entered upon the assessment roll of said County of San Diego, as a tax and lien upon and against said property. The tax bills for said assessment and tax are filed herewith as Exhibit "C".

XII

Thereafter on December 9, 1952 and April 20, 1953, plaintiff paid said taxes to the Tax Collector of San Diego

County as required by said lease, as shown by Exhibit "C", amounting to \$39,296.63.

XIII

Notwithstanding the fact that said property was on Monday, March 2, 1953, owned by the United States and notwithstanding the Constitution and laws of the United States and of the State of California, the County Assessor of San Diego County assessed against said property and improvements thereon county, district and city assessments for the year 1953, and thereafter the Board of Supervisors of said county levied county, district and city taxes thereon, including taxes for defendant City of Chula Vista, for the fiscal year 1953-1954, and thereafter said taxes were computed and entered upon the assessment roll of said County of San Diego, as a tax and lien upon and against said property. The tax bills for said assessment and tax are filed herewith as Exhibit "D".

XIV

Thereafter on December 4, 1953, plaintiff paid said taxes to the Tax Collector of San Diego County as required by said lease, as shown by Exhibit "D", amounting to \$55,460.78.

XV

Notwithstanding the fact that said property was on Monday, March 1, 1954, owned by the United States and notwithstanding the Constitution and laws of the United States and of the State of California, the County Assessor of San Diego County assessed against said property and improvements thereon county, district and city assessments for the year 1954, and thereafter the Board of Supervisors of said county levied county, district and city taxes thereon, including taxes for defendant City of Chula Vista, for the fiscal year 1954-1955, and thereafter said taxes were computed and entered upon the assessment roll of said County of San Diego, as a tax and lien upon and against said property. The tax bills for said assessment and tax are filed herewith as Exhibit "E".

XVI

Thereafter on December 10, 1954, plaintiff paid said taxes to the Tax Collector of San Diego County as required by said lease, as shown by Exhibit "E", amounting to \$56,922.94.

XVII

Said assessments, levies and collections of taxes on said real property and improvements as aforesaid are, and each of them is, erroneous, illegal and void and in violation of the Constitution and laws of the United States and of the State of California.

XVIII

Thereafter on April 14, 1955, plaintiff filed its claim for refund of taxes in the sum of \$170,289.65 with the Board of Supervisors of defendant County of San Diego, which claim for refund sought the recovery of the taxes hereinabove [fol. 5] referred to in this first cause of action, and on April 19, 1955 the said Board of Supervisors denied plaintiff's claim for refund of said taxes.

For a Second Cause of Action Against Defendant City of Chula Vista, Plaintiff Alleges as Follows:

I

Plaintiff is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California.

II

Defendant City of Chula Vista is, and at all times mentioned herein was, a Municipal corporation duly organized and existing under the laws of the State of California.

III

Under the terms of a lease with the United States of America acting by and through the General Services Administrator, dated September 1, 1949, a copy of which is

attached hereto as Exhibit "A", plaintiff as Lessee was required to pay to the proper authority when due all taxes, assessments and similar charges which might be taxed, assessed or imposed upon the Lessor or Lessee with respect to the leased premises and personal property located on said premises, or any part thereof, or upon the occupier thereof, or upon the use or operation of the leased premises and personal property.

IV

Said leased premises were and are located in the County of San Diego, State of California, and are within the City of Chula Vista, and are described in Exhibit "A".

V

At all times mentioned herein, plaintiff has occupied said premises under said lease and has complied with all of the terms and conditions of said lease.

VI

On May 29, 1946, said leased premises were declared surplus property under the Surplus Property Act of 1944, 58 Stat. 765, 50 USCA Appendix, Sec. 1611 et seq., and acting [fol. 6] under said Act the U. S. War Assets Administration accepted responsibility for said property.

VII

At all times subsequent to May 29, 1946, the said property was immune from taxation by State, County, Municipal, or local authorities, said immunity being provided by the Constitution and laws of the United States and of the State of California.

VIII

Notwithstanding the fact that said property was owned by the United States and notwithstanding the Constitution and laws of the United States and of the State of California,

the defendant City of Chula Vista assessed against said property and improvements thereon taxes for the year 1951-1952 and thereafter said defendant City of Chula Vista levied and collected taxes for the fiscal year 1951-1952. Copies of the tax bills for said taxes are filed herewith as Exhibit "F".

IX

Thereafter, on May 19, 1952, plaintiff paid the second installment of said taxes to the Tax Collector of the defendant City of Chula Vista as required by said lease and as shown by Exhibit "F" amounting to a total of \$5,458.72.

X

Notwithstanding the fact that said property was owned by the United States and notwithstanding the Constitution and laws of the United States and of the State of California, the defendant City of Chula Vista assessed against said property and improvements thereon taxes for the year 1952-1953 and thereafter said defendant City of Chula Vista levied and collected taxes for the fiscal year 1952-1953. The tax bills for said taxes are filed herewith as Exhibit "G".

XI

Thereafter on October 24, 1952 and May 18, 1953, plaintiff paid said taxes to the Tax Collector of the defendant City of Chula Vista as required by said lease and as shown by Exhibit "G", amounting to \$10,669.33.

XII

Said assessments, levies and collection of taxes on said [fol. 7] real property and improvements as aforesaid, and each of them, is erroneous, illegal and void and in violation of the Constitution and laws of the United States and of the State of California.

XIII

Thereafter on May 17, 1955 plaintiff filed its claim and demand for refund of taxes in the sum of \$16,128.05, with

the said defendant City of Chula Vista, which claim and demand for refund sought the recovery of the taxes hereinabove referred to in this second cause of action and on June 14, 1955 the said City of Chula Vista disapproved and rejected said plaintiff's claim and demand for refund of said taxes.

Wherefore, plaintiff prays judgment:

(1) Against defendant County of San Diego for the sum of \$170,289.65, said sum being the total of the erroneous, illegal and void taxes referred to in plaintiff's first cause of action, which have heretofore been paid by plaintiff to said defendant, County of San Diego, together with such interest on said sum as may be allowed by law.

(2) Against defendant City of Chula Vista for the sum of \$24,558.83, being the total of the taxes collected by defendant County of San Diego for defendant City of Chula Vista referred to in plaintiff's first cause of action, together with such interest on said sum as may be allowed by law.

(3) Against defendant City of Chula Vista for the sum of \$16,128.05, said sum being the total of the erroneous, illegal and void taxes which have heretofore been paid as aforesaid to defendant City of Chula Vista, referred to in plaintiff's second cause of action, together with such interest on said sum as may be allowed by law.

(4) For its costs of suit.

(5) For such other and further relief as to the court may seem proper.

Glen & Wright, by Leroy A. Wright, Attorneys for Plaintiff.

[fol. 8] *Duly sworn to by S. W. Shepard, jurat omitted in printing.*

[fol. 9]

EXHIBIT "A" TO COMPLAINT

LEASE

THIS LEASE made and entered into as of the First day of September, 1949, by and between **RECONSTRUCTION FINANCE CORPORATION**, a corporation duly organized and existing under and by virtue of the laws of the United States, which corporation has succeeded, pursuant to provisions of Public Law 109, 79th Congress, approved on June 30, 1945, to all the rights and assets of **DEFENSE PLANT CORPORATION** and the **UNITED STATES OF AMERICA**, both acting by and through the General Services Administrator under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944 (58 Stat. 765) as amended thereby and regulations and orders promulgated thereunder (hereinafter referred to as "Lessor"), and **ROHR AIRCRAFT CORPORATION**, a corporation organized and existing under the laws of the State of California having its office and place of business at Chula Vista, California (hereinafter referred to as "Lessee").

WITNESSETH:

WHEREAS, the leased premises, as hereinafter defined, have been declared surplus property of the Government of the United States, pursuant to the provisions of the "Surplus Property Act of 1944" and Surplus Property Board Regulation No. 1, as amended; and

WHEREAS, the leased premises, as hereinafter described, are included in the types of surplus property which have been assigned to War Assets Administration for disposal; and

WHEREAS, the Department of Air Force has determined that the use of the leased premises by the Lessee herein is necessary for the production of military equipment for the National Defense;

NOW THEREFORE,

ONE: Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described real estate and personal property:

Manufacturing Area No. 1:

That certain parcel of land in the City of Chula Vista, County of San Diego, State of California, and being a portion of the East One Half of the Fractional Quarter Section No. 171 of the Rancho de la Nacion according to map thereof by Morrell No. 166 on file in the Office of the Recorder of said County, more particularly described as follows:

Beginning at the Northeast Corner of said Northeast Quarter; thence Southerly along the Easterly line of said Northeast Quarter 1360.16 feet; thence Westerly and parallel with the Northerly line of said Quarter Section 170 feet to a point known as the true starting point of this description; thence Southerly and parallel with the Easterly line of said Quarter Section 1240.61 feet; thence Westerly and parallel with the Northerly [fol. 10] line of the said Quarter Section 354.76 feet; to a point on the mean high tide line; thence Northerly and along the mean high tide line through Survey Station No. 115 to Station No. 114, 383.89 feet, more or less; thence Northwesterly along the mean high tide line 230.78 feet to Survey Station No. 113; thence Northerly through Survey Station No. 112, 674.88 feet; Easterly and parallel with the Northerly line of said Quarter Section 521.04 feet to the point known as our true starting point of this description. The above-described plot of land consists of 13.5 acres, more or less.

Hangar Area No. 2:

All that real property situate in the City of Chula Vista, County of San Diego, State of California, bounded and described as follows:

Those portions of Quarter Sections 170 and 171 of the Rancho de la Nacion, in the City of Chula Vista,

County of San Diego, State of California, according to map thereof by Morrill, filed as Map No. 166 in the Office of the Recorder of San Diego County, bounded and described as follows:

Commencing at the Northeast corner of Quarter Section 171; thence South $18^{\circ} 42' 0''$ East along the Easterly line of said Quarter Section 1360.16 feet to a point of intersection with the Westerly prolongation of the Southerly line of "H" Street, as said Street is shown on Map No. 1198 of Bay Villa Tract, on file in the Recorder's Office; thence South $71^{\circ} 23' 30''$ West along said Westerly prolongation, being parallel with the Northerly line of said Quarter Section 171, a distance of 170.00 feet to the most Easterly corner of the land conveyed by the Santa Fe Land Improvement Company to the Rohr Aircraft Corporation by Deed dated January 8, 1941, and recorded January 22, 1941, in Book 1112, page 434 of Official Records; thence parallel with and distant 170.00 feet Westerly from the Easterly line of said Quarter Section 171, South $18^{\circ} 35' 00''$ East 1240.61 feet to the true point of beginning; thence continuing South $18^{\circ} 35' 00''$ East 40 feet to the South line of said Quarter Section 171; thence South $18^{\circ} 36' 30''$ East parallel with and 170 feet at right angles Westerly from the Easterly line of said Quarter Section 170 a distance of 1234.04 feet to a point in the Westerly prolongation of the Northerly line of "J" Street, as shown on Record Survey Map No. 917 on file in the Recorder's Office; thence along said Westerly prolongation South $71^{\circ} 25' 30''$ West 633.65 feet to a point in the mean high tide line of the Bay on San Diego, as same was established by d'Hemecourt; thence along said tide line the following courses and distances: North $6^{\circ} 19' 30''$ West 491.54 feet to Station 117 of said Tide Line Survey; thence North $3^{\circ} 17' 30''$ West 568.88 feet to Station 116; thence North $13^{\circ} 28' 00''$ West 297.51 feet to intersection with a line that is parallel with and 40 feet at right angles Northerly from the dividing line between said Quarter Sections 170 and 171; thence along said parallel line North $71^{\circ} 38' 30''$ East 352.34 feet to the true point of beginning. EX-

CEPTING therefrom all oil, gas, or other hydrocarbon substances which may be contained in or under said land. Subject to all reservations, restrictions, conditions, and easements of record.

[fol. 11] **EXCEPTING, HOWEVER,** from the lease and reserving to the United States of America, in accordance with Executive Order 9908, approved on December 5, 1947 (12 F. R. 8223), all uranium, thorium, and all other materials determined pursuant to section 5(b)(1) of the Atomic Energy Act of 1946 (60 Stat. 761), to be peculiarly essential to the production of fissionable material, contained in whatever concentration in deposits in the land covered by this instrument, are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the

Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

TOGETHER WITH all tenements and appurtenances and improvements thereon or thereunto belonging, and together with any and all additions, improvements, betterments, or replacements to said land and the buildings situated thereon, made during the term of this lease, for manufacturing purposes. (The term "leased premises" as hereinafter used shall include said land, tenements, and appurtenances and improvements, and any additions, betterments, improvements, or replacements thereto.)

TOGETHER WITH certain personal property located upon the above described premises as indicated below and described as follows:

Personal Property Located in Manufacturing Area No. 1:

One Furnace, Electric, Serial No. 21130

One Camera, Template Projection

Two Air Receivers, Vertical

Three Air Compressors, Serial Nos. 93831, 93832, and 97847

Personal Property Located in Hangar Area No. 2:

One Air Receiver, Vertical

One Air Compressor, Serial No. 104126.

TO HAVE AND TO HOLD said leased premises for a term beginning on the first day of September 1949, and ending on the thirty-first day of August 1954, both dates inclusive.

[fol. 12] **TWO:** Lessee shall pay to Lessor the sum of Eighty-five Thousand Seven Hundred Forty Dollars (\$85,740.00) per annum as rent for the leased premises, such rental to be paid in equal monthly installments of Seven Thousand One Hundred Forty-five Dollars (\$7,145.00) payable in advance on the first day of each and every month during the term of this lease commencing September 1, 1949. Lessee shall pay to Lessor the sum of

Four Thousand Ninety-one Dollars and Four Cents (\$4,091.04) per annum as rental for the above described personal property, such rental to be paid in equal monthly installments of Three Hundred Forty Dollars and Ninety-two Cents (\$340.92) payable in advance on the first day of each and every month during the term of this lease commencing September 1, 1949.

THREE: Lessor by a five (5) day notice in writing, may terminate this lease in the event (a) a receiver or trustee is appointed for Lessee or its property, or Lessee makes an assignment for the benefit of creditors, or Lessee becomes insolvent, or a petition is filed by or against Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Lessee a bankrupt, or for the reorganization of Lessee, or for the purpose of effecting a composition or rearrangement with Lessee's creditors, and any such petition filed against Lessee is not dismissed within sixty (60) days; or (b) of any violation of any of the terms, conditions, or covenants of this lease and the failure of Lessee to cure such violation within ten (10) days from the giving of a written notice thereof by Lessor to Lessee. Upon the expiration or termination of this lease, Lessor shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder, and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of Lessor's intention to cancel or terminate this lease other than as herein provided. In the event that this lease is terminated by reason of the violation by Lessee of any of its terms, conditions, or covenants, Lessor shall have the right to sue for and recover all rents and damages accrued or accruing under this lease or arising out of any violation thereof. If default be made in the payment of the above rent, or any part thereof, or in any of the covenants herein contained to be kept by the Lessee, Lessor may at any time, at its election, upon ten (10) days' written notice to Lessee, demand possession of and re-enter said premises, of any part thereof, with or without process of law, and remove Lessee or any

persons occupying the same, without releasing Lessee from its obligation to pay rent and all other sums as the same become due and payable until the expiration of the term of this lease. Provided such ten (10) days' notice shall have been given as provided in the next preceding sentence, nothing contained in this paragraph shall limit the right of Lessor to any of the remedies that would otherwise be available to Lessor under the Landlord and Tenant Act of the State of California.

FOUR: Lessor and Lessee shall each have the right during the term of this lease to terminate said lease upon sixty (60) days' written notice by Lessor to Lessee or Lessee to Lessor. Said right to terminate shall, however, not be exercised unless the property is no longer needed for the performance of Department of Air Force contracts or subcontracts with Lessee.

FIVE: Notwithstanding the provisions of paragraph four above, Lessee upon sixty (60) days' written notice to Lessor may at any time during the term of this lease terminate said lease in so far as the occupancy of the Hangar Area No. 2 above described is concerned, together with the personal property located therein. Should Lessee [fol. 13] so terminate this lease as it relates to said Hangar Area No. 2 and the personal property located therein then and in that event the annual rental payments due under paragraph two above shall be reduced in the amount of Twenty-four Thousand One Hundred Fifty-six Dollars (\$24,156.00) and the total annual rental due under said paragraph two shall be Sixty-one Thousand Five Hundred Eighty-four Dollars (\$61,584.00) for the leased premises, and the annual rental payments due under paragraph two above shall be reduced in the amount of Four Hundred Thirty-seven Dollars and Eighty-eight Cents (\$437.88) and the total annual rental due under said paragraph two shall be Three Thousand Six Hundred Fifty-three Dollars and Sixteen Cents (\$3,653.16) for the personal property.

SIX: Lessee has inspected and knows the condition of the leased premises and the personal property and has received the same in good order and repair, and it is

understood that the leased premises and the personal property are hereby leased to Lessee without any representations or warranty whatsoever on the part of Lessor, and without any obligation on the part of Lessor to make any alterations, repairs, or additions thereto except as hereinafter stated in this agreement.

SEVEN: (a) The Lessee will not, without the written consent of the Secretary of the Army, the Navy, or the Air Force, remove or make alterations to any of the production equipment, structures, or improvements, which removal or alteration would diminish the capacity existing on the date of the execution of the lease of the facility to produce the items for which it was designed unless restoration can be made within a period of 120 days or less.

(b) When, in the opinion of the Secretary, it becomes necessary for the Government to utilize the productive capacity of the facility for purposes of National Defense, the Government will undertake to negotiate a satisfactory contract with the Lessee provided such Lessee is, in the opinion of the Secretary, qualified to perform the work. In the event a mutually satisfactory contract cannot be negotiated with the Lessee within a period of 15 days, the lease may be terminated by the Government on 120 days' notice.

EIGHT: Lessee shall not make any additions, improvements, or alterations to the leased premises without the prior written consent of Lessor, including, without limitations, altering the construction of the floors, walls, columns, or ceilings, provided, however, that Lessee shall have the right to install such furniture, fixtures, machinery and equipment, or removable partitions of its own upon the leased premises as may, in its opinion, be necessary for the proper use thereof, and upon the expiration, termination or cancellation of this lease or within such reasonable time thereafter as may be allowed by Lessor, Lessee may remove all of such furniture, fixtures, machinery and equipment, and removable partitions owned by it provided, however, that all expenses in connection with the

installations and removal thereof shall be paid for by Lessee and Lessee shall, at its own expense, promptly repair any damage to the leased premises caused by such installations and removal. Except as herein provided, any additions, improvements, or alterations, and all replacements to the leased premises shall become the property of Lessor and shall be subject to all terms and conditions of this lease. For the time which may be accorded Lessee by Lessor within which Lessee may remove its property from the demised premises or in event Lessee holds over after the expiration, termination, or cancellation of the term of this lease, Lessee shall pay Lessor a prorated [fol. 14] amount based upon the annual rental established in paragraph two above computed from the date of expiration, termination or cancellation of the term of this lease, to and including the date of Lessee's vacation and removal of Lessee's property from the demised premises; provided, however, Lessee shall during said period continue to be bound by its covenants and agreements (except as to rental provided in paragraph two above) as herein contained with respect to the demised premises and to Lessor, notwithstanding the expiration, termination, or cancellation of the term of this lease. In event Lessee shall hold over after the expiration of the term above demised for a sufficient period of time to create a renewal of this Lease by operation of law, then any renewal or future right of possession not evidenced by an instrument in writing, executed and delivered by Lessor, shall be a tenancy from calendar month to calendar month and for no longer term.

NINE: Lessee shall use reasonable care in the occupation, use, and operation of the leased premises and personal property and shall at all times, during the term of this lease, keep and maintain the same in good state of repair, and shall, at Lessee's expense, make all repairs and perform all maintenance necessary to keep the premises and personal property at all times in as good condition as at the beginning of the term of this lease, and upon the expiration or termination of this lease, except as provided in paragraph eight above, Lessee shall forthwith

yield and place Lessor in peaceful possession of the leased premises free and clear of any liens, claims, or encumbrances and in as good condition as the leased premises existed at the commencement of this lease, ordinary wear and tear and acts of God excepted.

TEN: If Lessee shall fail or neglect to remove its property or restore the leased premises and personal property within the time above provided, then Lessor may cause such property to be removed and the leased premises and personal property to be so restored, and the cost of such removal and restoration shall be paid by Lessee to Lessor on demand, and no claims for damages against Lessor, its officers, agents, contractors, or employees shall be created or made on account of such removal and restoration.

ELEVEN: Lessor or its designated representative shall have the right to inspect the leased premises and personal property at all reasonable times during the term of this lease.

TWELVE: During the term of this lease Lessee shall procure and maintain at its cost insurance on the leased premises against fire, windstorm and such other hazards in such companies and in such amounts as shall be satisfactory to or required by Lessor. The policies evidencing such insurance shall be made payable to and delivered to Lessor. In the event of partial loss payable under any of the policies, the proceeds shall be applied by Lessor to the repair, restoration or replacement of the property so damaged or destroyed, provided, however, that in the event it is determined that the cost of repair, restoration or replacement will exceed the amount of the insurance proceeds, Lessor may elect whether or not to apply such proceeds as aforesaid. Any property acquired in replacement of the property damaged or destroyed shall be the property of Lessor and shall thereupon be subject to all of the terms and provisions of this lease. In the event Lessor determines that the cost of repairs, restoration or replacement of a partial loss will exceed the amount of insurance proceeds or the leased premises are so dam-

[fol. 15] aged or destroyed as to render said premises totally unusable by Lessee, and Lessor does not elect to apply the insurance proceeds to the repair, restoration or replacement thereof, as above set forth, Lessor will so advise the Lessee in writing and this lease may thereafter be terminated by either party upon ten (10) days' written notice to the other party.

Lessee also agrees to save Lessor harmless against any liability whatsoever because of accident or injury to persons or property occurring in the use or operation of the leased premises or in connection with the occupancy thereof. Lessee further agrees that during the term of this lease it will procure and maintain at its cost public liability insurance and property damage insurance in such amounts and with such companies as Lessor shall approve or require. The policies evidencing such insurance shall name Lessor as an assured and shall be delivered to Lessor.

In the event Lessee fails to procure any such insurance or pay any of the premiums when due, then Lessor may at its option procure such insurance and pay any delinquent premiums and require Lessee to immediately reimburse it for such cost, which amount is hereby declared to be additional rental and shall become immediately due and payable.

THIRTEEN: Lessee agrees to pay to the proper authority when and as the same become due and payable all taxes, assessments and similar charges which at any time during the term of this lease may be taxed, assessed or imposed upon Lessor or Lessee with respect to or upon the leased premises and personal property or any part thereof, or upon the occupier thereof, or upon the use or operation of the leased premises and personal property, provided, however, that such taxes, assessments or similar charges shall be prorated and apportioned as of the date of commencement and as of the effective date of expiration, termination or cancellation of this agreement, respectively, but the obligation of Lessee with respect to the payment of such taxes, assessments or similar charges shall include the amount thereof properly applicable during

the term of this lease. Lessee also agrees to contract in its own name for and to pay all claims or charges for or on account of water, light, heat, power and any other service or utility furnished to or with respect to the leased premises or any part thereof.

In the event Lessee fails to pay when due any taxes, assessments, utility bills or similar charges, as above set forth, then Lessor may at its option pay such taxes, assessments, bills or other charges and require Lessee to immediately reimburse it for such cost, which amount is hereby declared to be additional rental and shall become immediately due and payable. Lessor reserves the right to contest the validity or amount of any tax assessment and Lessee agrees to give Lessor notice of all taxes and assessments immediately upon receipt thereof by Lessee.

FOURTEEN: In the occupation, use, and operation of the leased premises or personal property or any part thereof Lessee agrees to comply with all applicable State, municipal, and local laws and the rules, orders, regulations, and requirements of any departments and bureaus and all local ordinances and regulations, and Lessee further agrees to indemnify and hold Lessor harmless from any liability or penalty which may be imposed by local or State authority or any department or bureau thereof by reason of any asserted violation by Lessee of such laws, rules, orders, ordinances, or regulations; provided, however, that nothing herein contained shall prohibit Lessee [fol. 16] from contesting in good faith the validity of any such laws, rules, orders, ordinances or regulations.

FIFTEEN: Lessee agrees that in the performance of this lease it will comply with and give all stipulations and representations required by applicable federal laws, and in the performance of this lease that it will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

SIXTEEN: Except with the prior written consent of Lessor Lessee shall not sublet any part of the premises or assign this lease or any of its rights hereunder or transfer, assign, mortgage, or otherwise encumber any of

the leased premises: provided, however, that this paragraph shall not prohibit Lessee for its own account or under such other arrangements as it may deem desirable without any expense to Lessor, from dispensing and selling food, soft drinks, tobacco products, confectionery, and similar articles to employees of Lessee on the premises.

SEVENTEEN: Lessee warrants that it has not employed any person to solicit or secure this lease upon any agreement for a commission, percentage, brokerage, or contingent fee.

EIGHTEEN: The failure of Lessor to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this lease shall not be construed as a waiver or a relinquishment of the future performance of any such term, covenant, or condition, but Lessee's obligation with respect to such future performance shall continue in full force and effect.

NINETEEN: Subject to the provisions of paragraph sixteen hereof, this lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

TWENTY: No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to apply to this lease if made with a corporation for its general benefit.

TWENTY-ONE: Any notice or advice to or demand upon the Lessee shall be in writing and shall be deemed to have been given or made on the day when it is sent by registered mail to the Lessee, addressed to Lessee at Chula Vista, California, or at such other address as Lessee may hereafter from time to time specify in writing for such purpose. Any notice or advice to or demand upon Lessor shall be in writing and shall be deemed to have been given or made when it is sent by registered mail to Lessor, addressed to 1000 Geary Street, San Francisco 9, California, or at such other address as Lessor may here-

after from time to time specify in writing for such purpose.

TWENTY-TWO: It is understood and agreed that this lease shall be subject to a determination by the Department of Justice that said lease is not violative of the antitrust laws of the United States.

[fol. 17] **TWENTY-THREE:** It is understood and agreed that this lease and the terms hereof shall be subject to the approval of the Secretary of Air Force or his representative.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed and their seals to be hereto affixed as of the day and year first above written.

RECONSTRUCTION FINANCE CORPORATION
And the
UNITED STATES OF AMERICA
Acting by and through the
General Services Administrator

By /s/ **DONN A. BIGGS**
Donn A. Biggs
Director of Disposals
War Assets
San Francisco, California

**APPROVED AS TO
SUBSTANCE, FORM
AND AUTHORITY**

ROHR AIRCRAFT CORPORATION

By /s/ **J. E. RHEIM**
Executive Vice-President

ATTEST: /s/ S. W. SHEPARD
Secretary

[fol. 18]

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

)
) ss.
)

On this 29th day of September, 1949, before me, Steve G. Chapralis, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared DONN A. BIGGS, known to me to be the Director of Disposals, War Assets, General Services Administration, San Francisco, California, and known to me to be the person who executed the within instrument on behalf of the General Services Administrator, who executed said instrument on behalf of the Reconstruction Finance Corporation and the United States of America, and acknowledged to me that he subscribed to the said instrument the name of the Reconstruction Finance Corporation, the United States of America, and the name of the General Services Administrator on behalf of the Reconstruction Finance Corporation and the United States of America, and further, that the Reconstruction Finance Corporation and the United States of America and the General Services Administrator executed said instrument.

WITNESS my hand and Official Seal.

STEVE G. CHAPRALIS

Notary Public
 in and for the City and County of
 San Francisco, State of California

(SEAL)

My Commission expires:
 10/22/52

[fol. 19] **DELEGATION OF AUTHORITY**

To: Donn A. Biggs, Director of Disposals
(Name and full title of delegatee)

1. Pursuant to the authority delegated to me in that certain Delegation of Authority, dated June 7, 1949, signed by Paul L. Mather, Administrator, entitled "Delegation of Authority Incident to the Care, Handling, and Conveyancing of Surplus Real Property and Personal Property Assigned for Disposal Therewith", I hereby authorize Donn A. Biggs, Director of Disposals, War Assets Administration, Region 10, San Francisco, California, individually (1) to execute, acknowledge and deliver any deed, lease permit, contract, receipt, bill of sale, or other instruments in writing in connection with the care, handling and disposal of surplus real property, or personal property assigned for disposition with real property, located within the United States, its territories and possessions, (2) to accept any notes, bonds, mortgages, deeds of trust or other security instruments taken as consideration in whole or in part for the disposition of such surplus real or personal property, and to do all acts necessary or proper to release and discharge any such instrument or any lien created by such instrument or otherwise created, and (3) to do or perform any other act necessary to effect the transfer of title to any such surplus real or personal property located as above provided; all pursuant to the provisions of law, including the Surplus Property Act of 1944, as amended (58 Stat. 765; 50 U.S.C. App. Supp. 1611); Public Law 181, 79th Cong. (59 Stat. 533; 50 U.S.C. App. Supp. 1614 a, 1614 b); Reorganization Plan 1 of 1947 (12 F.R. 4534); Public Law 289, 80th Cong. (61 Stat. 678); Public Law 829, 80th Cong; Public Law 883, 80th Cong; Public Law 616, 80th Cong; War Assets Administration Appropriation Acts; and War Assets Administration Regulation No. 1 (12 F.R. 6661), as amended.
2. This authority may not be redelegated.

3. This delegation shall become effective June 8, 1949 and shall terminate automatically at such time as you may cease to hold the position named above or unless earlier revoked.

/s/ ROBERT B. BRADFORD
(Name)

Regional Director
(Title)

WAR ASSETS ADMINISTRATION

ACKNOWLEDGMENT

June 8, 1949
(Date)

I hereby acknowledge receipt of the above delegation of authority and certify that I will exercise the authority so delegated in accordance with all applicable laws and regulations, and that the signature below is my official signature.

/s/ DONN A. BIGGS
(Name)

Director of Disposals
(Title)

WAR ASSETS ADMINISTRATION

[fol. 20]

GENERAL SERVICES ADMINISTRATION

(NOTICE)

DELEGATION OF AUTHORITY

CONTINUING PRIOR DELEGATIONS OF AUTHORITY OF WAR ASSETS ADMINISTRATIONS

Pursuant to the authority vested in me as Liquidator of War Assets by Administrator's Temporary Regulation No. 1, dated July 1, 1949, and the Federal Property and Administrative Services Act of 1949, I hereby declare that all

delegations of authority in effect on June 30, 1949 in the War Assets Administration shall continue in full force and effect with respect to all matters pertaining to War Assets transferred to the General Services Administration by the Federal Property and Administrative Services Act, 1949 or to the Administrator of General Services.

/s/ PAUL L. MATHER
Liquidator of War Assets

Dated July 1, 1949

[fol. 21]

(NOTICE)

DELEGATION OF AUTHORITY NO. 124

DELEGATION OF AUTHORITY INCIDENT TO THE CARE, HANDLING, AND CONVEYANCING OF SURPLUS REAL PROPERTY AND PERSONAL PROPERTY ASSIGNED FOR DISPOSAL THEREWITH.

The Director, Industrial Real Estate Disposal Division, the Director, General Real Estate Disposal Division, and the General Counsel, War Assets Administration; the Regional Director and the Associate Regional Director, in each and every War Assets Administration Regional Office; and any person or persons designated to act, and acting, in any of the foregoing capacities, are hereby authorized, individually (1) to execute, acknowledge and deliver any deed, lease, permit, contract, receipt, bill of sale, or other instruments in writing in connection with the care, handling and disposal of surplus real property, or personal property assigned for disposition with real property, located within the United States, its territories and possessions, (2) to accept any notes, bonds, mortgages, deeds of trust or other security instruments taken as consideration in whole or in part for the disposition of such surplus real or personal property, and to do all acts necessary or proper to release and discharge any such instrument or lien created by such instrument or otherwise created, and (3) to do or perform any other act necessary to effect the transfer of title to any such surplus real or personal property located

as above provided; all pursuant to the provisions of law, including the Surplus Property Act of 1944, as amended (58 Stat. 765; 50 U.S.C. App. Supp. 1611); Public Law 181, 79th Cong. (59 Stat. 533; 50 U.S.C. App. Supp. 1614 a, 1614 b); Reorganization Plan 1 of 1947 (12 F.R. 4534); Public Law 289, 80th Cong. (61 Stat. 678); Public Law 829, 80th Cong; Public Law 883, 80th Cong; Public Law 616, 80th Cong; War Assets Administration Appropriation Acts; and War Assets Administration Regulation No. 1 (12 F. R. 6661), as amended.

The Regional Director in each and every War Assets Administration Regional Office is hereby authorized to re-delegate to such person or persons as he may designate the authority delegated to him by this instrument.

L. S. Wright, the Secretary of The General Board War Assets Administration, is hereby authorized to certify true copies of this Delegation and provide such further certification as may be necessary to effectuate the intent of this Delegation in form for recording in any jurisdiction, as may be required.

This Delegation shall be effective as of the opening of business on June 7, 1949.

This authority is in addition to delegations of authority previously granted under dates of May 17, 1946; May 29, 1946; July 30, 1946; September 16, 1946; October 31, 1946; November 22, 1946; January 13, 1947; June 6, 1947; December 1, 1947; April 2, 1948; July 1, 1948; and April 1, 1949; but shall not in any manner supersede provisions of said delegations as do not conflict with the provisions of this Delegation.

/s/ PAUL L. MATHER

Paul L. Mather
Administrator

Dated; June 7, 1949.

[fol. 22] WAA Form 1241
(4-12-48)

UNITED STATES OF AMERICA

War Assets Administration

CERTIFICATE

I, the undersigned, L. S. Wright, Secretary of The General Board, General Services Administration, War Assets, in my official capacity as such Secretary of The General Board, and duly authorized in the DELEGATION OF AUTHORITY INCIDENT TO THE CARE, HANDLING AND CONVEYANCING dated June 7, 1949, to make the following certification, do hereby certify:

1. That Robert B. Bradford is the Regional Director General Services Administration War Assets, duly appointed, authorized and acting in such capacity at the time of the execution of the attached instrument.

2. That the attached DELEGATION OF AUTHORITY INCIDENT TO THE CARE, HANDLING AND CONVEYANCING is a true and correct copy of the original of said DELEGATION OF AUTHORITY, dated June 7, 1949.

Given under my hand this 26th day of September, 1949

/s/ L. S. WRIGHT

Secretary
(Title)

The General Board
(Office)

War Assets
General Services Administration

[fol. 23]

CERTIFICATE

I, S. W. Shepard, Secretary of Rohr Aircraft Corporation, hereby certify the following to be a true and exact copy of a resolution passed at a Board of Directors meeting of Rohr Aircraft Corporation held September 22, 1949.

"RESOLVED, that J. E. Rheim, Executive Vice President, and S. W. Shepard, Secretary, be, and they are hereby authorized and directed to execute a lease agreement dated September 1, 1949 with Reconstruction Finance Corporation, acting by and through General Services Administration, War Assets, for the rental of the former Defense Plant Corporation facilities lying between H and J Streets, Chula Vista, California.

RESOLVED FURTHER, that said officers are authorized to execute amendments or revisions to said agreement from time to time as they may become necessary."

IN WITNESS WHEREOF: I have executed this certificate this 22nd day of September, 1949.

/s/ S. W. SHEPARD
S. W. Shepard, Secretary
ROHR AIRCRAFT CORPORATION

(Seal)

[fol. 24] **SUPPLEMENT TO LEASE**

THIS AGREEMENT, made and entered into as of the 1st day of September, 1954, by and between **RECONSTRUCTION FINANCE CORPORATION**, a corporation duly organized and existing under and by virtue of the laws of the United States, which corporation has succeeded, pursuant to provisions of Public Law 109, 79th Congress, approved June 30, 1945, to all the rights and assets of **DEFENSE PLANT CORPORATION** and the **UNITED STATES OF AMERICA**, both acting by and through the General Services Administrator under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944 (58 Stat. 765) as amended thereby and regulations and orders promulgated thereunder (hereinafter referred to as "Lessor"), and **ROHR AIRCRAFT CORPORATION**, a corporation organized and existing under the laws of the State of California, having its office and place of business at Chula Vista, California (hereinafter called "Lessee"),

WITNESSETH:

WHEREAS, the parties hereto entered into that certain Lease dated the 1st day of September, 1949, whereby Lessor leased to Lessee for a period of five (5) years those premises more particularly described in said Lease; and

WHEREAS, by the terms thereof the said Lease expired on August 31, 1954; and

WHEREAS, the said Lease has been extended from time to time by mutual agreement of the parties hereto; and

WHEREAS, Lessee has been in continuous possession of the leased premises up to and including the date hereof; and

WHEREAS, it is the desire of the parties hereto that the said Lease be extended to August 31, 1955,

Now, **THEREFORE**, in consideration of the premises, the parties hereto mutually agree that the said Lease shall be, and the same is hereby, amended to extend the period of the said Lease to and including the 31st day of August, 1955.

All other provisions contained in said Lease shall remain in full force and effect throughout the period of the extension provided above.

Dated this 15th day of September, 1955.

**RECONSTRUCTION FINANCE CORPORATION and the
UNITED STATES OF AMERICA,
Both Acting by and through the
General Services Administrator**

By /s/ **ELMO L. BUTTLE**
Elmo L. Buttle
Chief, Real Property Disposal Division
Public Buildings Service
General Services Administration
Region 9, San Francisco, Calif.

ROHE AIRCRAFT CORPORATION

By /s/ **J. E. RHEIM**

Executive Vice President

ATTEST: S. W. SHEPARD

Secretary

[fol. 49]

[File endorsement omitted]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

No. 200839

[Title omitted]

ANSWER—Filed May 14, 1956

Comes now the defendant County of San Diego and severing itself from its co-defendant City of Chula Vista, for answer to the complaint on file herein admits, denies and alleges:

I

Answering paragraphs IV and V admits the allegations thereof.

II

Answering paragraphs VI and VII defendant has no information or belief sufficient to enable it to answer the allegations of said paragraphs and basing its denial upon that ground denies the allegations therein contained.

III

Answering paragraph VIII denies the allegations thereof.

IV

Answering paragraphs IX, X, XI, XII, XIII, XIV, XV and XVI admits the allegations thereof.

V

Answering paragraph XVII denies the allegations thereof.

[fol. 50]

VI

Answering paragraph XVIII admits the allegations thereof.

For answer to the second cause of action defendant admits, denies and alleges:

I

Answering paragraphs VIII, IX, X, XI, XII and XIII defendant has no information or belief sufficient to enable it to answer the allegations of said paragraphs and basing its denial upon that ground denies the allegations therein contained.

And for a Separate Affirmative Defense Defendant
Alleges:

That during all the tax years in question and prior thereto, to wit, during all the time the subject property was under lease by plaintiff, plaintiff was the owner and holder of a possessory interest therein which was and is taxable to plaintiff, but which has heretofore escaped taxation; that defendant is informed and believes and based on such information and belief alleges that the total amount of taxes on said possessory interest so escaping taxation would if properly assessed and computed according to law, equal or exceed in amount the total taxes heretofore paid by plaintiff, as set forth in its complaint, and that accordingly plaintiff has paid no more taxes for the tax years in question than in equity and good conscience it should have paid and is therefore entitled under the law to no refund whatever.

That this Court cannot under the law reassess the subject property or compute the value of or the amount of taxes due on this taxable possessory interest of plaintiff for the tax years in question, but the Board of Supervisors of the County of San Diego sitting as a County Board of

Equalization can and should do so, and/or direct the County Assessor to make and enter such an escape assessment on the assessment roll prepared or being prepared and submit the same to said Board for equalization all as required by law.

[fol. 51] Wherefore defendant prays that the Court make its interlocutory order remanding this case to the Board of Supervisors of the County of San Diego sitting as a Board of Equalization to ascertain and determine, pursuant to Sections 531, 1604 and 1611 Revenue and Tax. Code and as otherwise provided by law, the valuation for taxation purposes and the total amount of taxes due on plaintiff's possessory interest in said leased property for the tax years set forth in the complaint, and to certify to this Court the said total amount of equalized assessment and taxes when so obtained; whereupon defendant shall be given the opportunity to amend its answer to set forth such assessment and taxes as an equitable offset to plaintiff's demand for refund, and the case may then proceed to trial on the merits, the Court retaining jurisdiction until final disposition of the matters aforesaid.

James Don Keller, District Attorney and County Counsel in and for the County of San Diego, State of California, By Carroll H. Smith, Deputy, Attorneys for Defendant, County of San Diego.

[fol. 53] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ANSWER OF THE CITY OF CHULA VISTA
—Filed September 7, 1956

Comes Now the defendant City of Chula Vista, a municipal corporation and severing itself from its co-defendant

County of San Diego, in answer to complaint on file herein, admits, denies and alleges as follows:

I

Answering paragraphs IV and V, admits the allegations thereof.

II

Answering paragraphs VI and VII, defendant has no information or belief sufficient to enable it to answer the allegations of said paragraphs and basing its denial upon that ground, denies the allegations therein contained.

III

Answering paragraph VIII, denies the allegations contained therein.

[fol. 54]

IV

Answering paragraph XVII, denies the allegations thereof.

In answer to plaintiff's second cause of action against defendants, the defendant City of Chula Vista admits, denies and alleges:

I

Defendant has no information or belief on which to answer the allegations contained in paragraph VI, and upon lack of such information and belief, denies each and every allegation contained therein.

II

Denies the allegations contained in paragraphs VII and XII.

For a Separate Affirmative Defense Defendant Alleges:

That during all the tax years in question and prior thereto, to wit, during all the time the subject property was under lease by plaintiff, plaintiff was the owner and holder of a possessory interest therein which was and is taxable

to plaintiff, but which has heretofore escaped taxation; that defendant is informed and believes and based on such information and belief alleges that the total amount of taxes on said possessory interest so escaping taxation would if properly assessed and computed according to law, equal or exceed in amount the total taxes heretofore paid by plaintiff, as set forth in its complaint, and that accordingly plaintiff has paid no more taxes for the tax years in question than in equity and good conscience it should have paid and is therefore entitled under the law to no refund whatever.

That this Court cannot under the law reassess the subject property or compute the value of or the amount of taxes due [fol. 55] on this taxable possessory interest of plaintiff for the tax years in question, but the Board of Supervisors of the County of San Diego sitting as a County Board of Equalization can and should do so, and/or direct the County Assessor to make and enter such an escape assessment on the assessment roll prepared or being prepared and submit the same to said Board for equalization all as required by law.

Wherefore defendant prays that the Court make its interlocutory order remanding this case to the Board of Supervisors of the County of San Diego sitting as a Board of Equalization to ascertain and determine, pursuant to Sections 531, 1604 and 1611 Revenue and Taxation Code and as otherwise provided by law, the valuation for taxation purposes and the total amount of taxes due on plaintiff's possessory interest in said leased property for the tax years set forth in the complaint, and to certify to this Court the said total amount of equalized assessment and taxes when so obtained; whereupon defendant shall be given the opportunity to amend its answer to set forth such assessment and taxes as an equitable offset to plaintiff's demand for refund, and the case may then proceed to trial on the merits, the Court retaining jurisdiction until final disposition of the matters aforesaid; that the plaintiff take nothing by its actions; and for costs of action herein incurred.

Merideth L. Campbell, City Attorney for the Defendant City of Chula Vista.

[fol. 57]

[File endorsement omitted]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

No. 200839

[Title omitted]

STIPULATION—Filed December 7, 1956

It is hereby stipulated by and between the parties hereto and their respective counsel in the above-entitled action, for the purposes of trial, as follows:

1. That the lease, which is attached as Exhibit A to the complaint is a true copy; was executed with full authority on the part of the U. S. Government, and was the contract under which the plaintiff was occupying the subject property, and may be received in evidence by reference.

2. That Form SPB-5, submitted in photostatic form, is a true and correct copy of the Declaration of Surplus Property referred to in paragraph 7 of the complaint and may be received in evidence.

3. That prior to the tax year 1953-54, the defendant City of Chula Vista levied and collected its own taxes. That commencing with the tax year 1953-54, the duties of assessment and tax collection for said city were transferred to the county assessor and the county tax collector of the County of San Diego.

4. That the total amount of taxes on the county assessment rolls, assessed against the subject property for the respective tax years in question, and for which refund is sought in this action, is the sum of \$170,289.65. That of said sum the amount thereof assessed and collected by the county for and on behalf of said county, school districts and other revenue districts is \$145,730.82. That of said sum of \$170,289.65 the amount thereof assessed and collected by the county for and on behalf of the City of

Chula Vista is \$24,558.83. That the amount of taxes, for which refund is sought in this action, collected by the City of Chula Vista under assessments made by it for and on its own behalf for the tax years 1951-52 and 1953-54 is the sum of \$16,128.05. That the total amount of county taxes sought to be recovered in this action is \$145,730.82 aforesaid, and that the total amount of City of Chula Vista taxes so sought to be recovered is \$40,686.88.

5. That the photostatic copies of the assessment rolls now offered by defendant county show respectively the left and right hand pages of the original assessment books of the county which contain the entries of the original assessments of the subject property for the four respective tax years in question, all as made and entered on said books by the county; that all entries of assessments other than those of the subject property have been blanked out and deleted from such photostatic copies; that such copies are true and correct copies of said original entries of county assessments of the subject property and may be received in evidence.

6. That the certified copy of the deed from Santa Fe Land Improvement Co. to Rohr Aircraft Corporation now offered by defendant county, dated June 2, 1941, and recorded June 11, 1941, in Book 1188, page 494 of Official Records, San Diego County, truly and correctly describes both parcels of the subject property, otherwise referred to in the complaint and its exhibits as Manufacturing Area No. 1 or Parcel 27-186-1, and Hangar Area No. 2 or Parcel 27-185-1 respectively, and may be received in evidence.

7. That the certified copy of the deed from Rohr Aircraft [fol. 59] Corporation to Defense Plant Corporation, now offered by defendant county, dated October 22, 1942, and recorded November 16, 1942, in Book 1423, page 421, Official Records, San Diego County, truly and correctly describes the aforesaid Manufacturing Area No. 1 or Parcel 27-186-1 of the subject property, and may be received in evidence.

8. That the certified copy of the deed from Rohr Aircraft Corporation to Defense Plant Corporation, now offered by defendant county, dated October 28, 1943, and recorded No-

vember 3, 1943, in Book 1582, page 232 of Official Records, San Diego County, truly and correctly describes the aforesaid Hangar Area No. 2 or Parcel 27-185-1 of the subject property, and may be received in evidence.

9. That the certified copy of the deed from Reconstruction Finance Corporation to the United States of America, dated March 17, 1955, and recorded May 6, 1955, in Book 5634, page 66 of Official Records, San Diego County, truly and correctly describes both aforesaid parcels of the subject property, among others, and may be received in evidence.

10. That the plaintiff in this action is a corporation other and different from the Rohr Aircraft Corporation which was the original lessee under the lease attached as Exhibit A to the complaint herein. That the plaintiff herein was organized under the laws of the State of California on October 18, 1949, and thereafter, on December 7, 1949, acquired by purchase, the assets of said original lessee and said lease was thereupon duly assigned to plaintiff, who is the successor in interest to said original corporation. That said original Rohr Aircraft Corporation, not this plaintiff, was the grantee under the deed mentioned in paragraph 6 of this Stipulation, and the grantor in the deeds mentioned in paragraphs 7 and 8 hereof.

11. That defendant county's Exhibit "I" for identification, which is a 12-page document showing in detail the formula and method employed by the county assessor in making his possessory interest assessment of the subject [fol. 60] property for equitable offset purposes, together with explanatory note by County Counsel, is a properly computed estimate of the amount of said possessory interest assessment for the five tax years there shown, and that for the tax years 1952-53, 1953-54, and 1954-55 respectively, the same is also a true and correct computation of the amount of equitable offset which the Court may find to be due and owing defendants. Said exhibit may be received in evidence, subject to a motion to strike to be made by plaintiff addressed to those portions of said exhibit covering the tax years 1951-52 and 1955-56.

Dated: San Diego, California, November 20, 1956.

James Don Keller, District Attorney in and for the County of San Diego, State of California, By Carroll H. Smith, Deputy, Attorneys for Defendant County.

Merideth L. Campbell, City Attorney for the Defendant City of Chula Vista.

Glenn & Wright, By Robert Thorn, Attorneys for Plaintiff.

[fol. 61] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

No. 200839

ROHR AIRCRAFT CORPORATION, a California corporation,
Plaintiff,

—v.—

COUNTY OF SAN DIEGO, a body corporate, and CITY OF
CHULA VISTA, a Municipal corporation, Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
January 29, 1957

This cause came on regularly for trial on the 7th day of December, 1956, before the above-entitled court, in Department No. 1 thereof, the Honorable Arthur L. Mundo, judge presiding, plaintiff appearing by its attorneys, Glenn & Wright, by Leroy A. Wright and Olney R. Thorn; defendant County appearing by its attorneys, James Don Keller, District Attorney and County Counsel, and Carroll H. Smith, Deputy; defendant City of Chula Vista appearing by its attorney, Merideth L. Campbell; and evidence oral and documentary having been introduced by the parties, and the case having been fully argued by counsel, and the

trial having been concluded on the 11th day of December, 1956, and the cause having been submitted for decision, and the Court having considered the evidence and the arguments of counsel and being fully advised in the premises, does hereby make and enter its Findings of Fact and Conclusions of Law, as follows:

[fol. 62]

FINDINGS OF FACT

I.

That the subject property, which is described in the lease attached to the complaint and marked Exhibit A, was acquired by Rohr Aircraft Corporation, plaintiff's predecessor in interest, from the Santa Fe Land Improvement Co. by deed dated June 2, 1941, and recorded June 11, 1941, in Book 1188, Page 494 of Official Records, San Diego County.

II.

That said property was conveyed by plaintiff's said predecessor in interest to Defense Plant Corporation, a subsidiary of Reconstruction Finance Corporation, by deed dated October 22, 1942, and recorded November 16, 1942, in Book 1423, Page 421, Official Records, San Diego County, as to one parcel or portion thereof, and by deed dated October 28, 1943, and recorded November 3, 1943, in Book 1582, Page 232 of Official Records, San Diego County, as to the remaining parcel or portion thereof.

III.

That on or about May 29, 1946, the Reconstruction Finance Corporation transferred custody of the subject property to the War Assets Administration under and pursuant to the Surplus Property Act of 1944, 58 Stat. 765, 50 U.S.C.A. Appendix, Sec. 1611 et seq.

IV.

That on September 1, 1949, the Reconstruction Finance Corporation entered into the lease of the subject property with plaintiff's predecessor in interest, said lease being hereinbefore referred to as Exhibit A.

V.

That the plaintiff in this action is a corporation other and different from the Rohr Aircraft Corporation which was the original lessee under the lease attached as Exhibit A to the complaint herein. That said original Rohr Aircraft [fol. 63] Corporation, not this plaintiff, was the grantee under the deed mentioned in paragraph I hereinabove, and the grantor in the deeds mentioned in paragraph II hereinabove. That the plaintiff herein was organized under the laws of the State of California on October 18, 1949, and thereafter, on December 7, 1949, acquired by purchase, the assets of said original lessee and said lease was thereupon duly assigned to plaintiff, who is the successor in interest to said original corporation.

VI.

That under and pursuant to the terms of said lease plaintiff covenanted to pay and did pay the taxes assessed, levied and collected against the subject property, and sought to be refunded in this action.

VII.

That the Reconstruction Finance Corporation did not dispose of its legal title to the subject property until 1955, when it conveyed the same to the United States of America by quitclaim deed dated March 17, 1955, and recorded May 6, 1955, in Book 5634, Page 66 of Official Records, San Diego County.

VIII.

That at all times mentioned in the complaint, to wit, for and during the fiscal years 1951-52, 1952-53, 1953-54, and 1954-55, and for some time prior and subsequent thereto, to wit, from November 3, 1943 to May 6, 1955, the Reconstruction Finance Corporation was the record owner and holder of the legal title to the subject property. That during each of said fiscal years, 1951-52 to 1954-55 inclusive, the subject property was assessed to Reconstruction Finance Corporation.

IX.

That the subject property is and was at all times mentioned in the complaint real property consisting of land and improvements thereon.

[fol. 64]

X.

That the taxes which were assessed, levied and collected by the defendants against the subject property and which are sought to be refunded in this action were and are real property taxes.

XI.

That ever since 1932, and at all times mentioned in the complaint, by express Congressional consent, to wit, under and pursuant to Title 15, Sec. 607, United States Code Annotated, the real property of the Reconstruction Finance Corporation has been subject to local taxation to the same extent according to its value as other real property is taxed.

XII.

That the Court makes no findings as to the separate affirmative defense of the defendants.

FROM THE FOREGOING FINDINGS OF FACT THE COURT MAKES ITS CONCLUSIONS OF LAW AS FOLLOWS:

I.

That the Reconstruction Finance Corporation was the record owner and holder of the legal title to the subject property from November 3, 1943 to May 6, 1955, and was the proper and lawful assessee thereof for the four tax years in question, to wit, for the fiscal years 1951-52 to 1954-55 inclusive.

II.

That said transfer of custody of the subject property to the War Assets Administration on or about May 29, 1946, did not operate as or constitute in any way a withdrawal, termination, or revocation, either express or implied, of the express Congressional consent to tax said subject prop-

erty conferred by the Reconstruction Finance Corporation Act provision aforesaid, to wit, Title 15, Sec. 607, U.S.C.A.

III.

That accordingly the taxes herein sought by plaintiff to [fol. 65] be recovered were and are properly and lawfully assessed, levied and collected by defendants and are not refundible to plaintiff or any other person or party, in whole or in part, or at all.

IV.

That both defendants are entitled to judgment against the plaintiff that the plaintiff take nothing, that the complaint be dismissed with prejudice, and that defendants recover their costs.

Dated, San Diego, Calif., Jan. 29, 1957.

Arthur L. Mundo, Judge of the Superior Court.

[fol. 66]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

No. 200839

ROHR AIRCRAFT CORPORATION, a California corporation,
Plaintiff,

v.

COUNTY OF SAN DIEGO, a body corporate, and CITY OF
CHULA VISTA, a Municipal corporation, Defendants.

JUDGMENT—January 29, 1957

This cause came on regularly for trial on the 7th day of December, 1956, before the above-entitled court, in De-

partment No. 1 thereof, the Honorable Arthur L. Mundo, judge presiding, plaintiff appearing by its attorneys, Glenn & Wright, by Leroy A. Wright and Olney R. Thorn; defendant County appearing by its attorneys, James Don Keller, District Attorney and County Counsel, and Carroll H. Smith, Deputy; defendant City of Chula Vista appearing by its attorney, Merideth L. Campbell; and evidence oral and documentary having been introduced by the parties, and the case having been fully argued by counsel, and the trial having been concluded on the 11th day of December, 1956, and the cause having been submitted for decision, and the Court having considered the evidence and the arguments of counsel and being fully advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law, Now Therefore

It Is Ordered, Adjudged and Decreed:

That both defendants have judgment against the plaintiff; that the plaintiff take nothing; that its complaint be dismissed with prejudice, and that defendants recover their costs in the sum of \$.....

Dated, San Diego, Calif., Jan. 29, 1957.

Arthur L. Mundo, Judge, Superior Court.

[fol. A]

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

BOHR AIRCRAFT CORPORATION, Plaintiff and Appellant,

vs.

**COUNTY OF SAN DIEGO, a body corporate, and CITY OF CHULA
VISTA, a Municipal corporation, Defendants and Re-
spondents.**

From San Diego County.

Hon. Arthur L. Mundo, Judge.

Excerpts from Reporter's Transcript

APPEARANCES

**Glenn & Wright, By Leroy A. Wright and Robert Thorn,
Attorneys for Plaintiff and Appellant, 1434 Fifth Ave-
nue, San Diego 1, California, BElmont 4-3571.**

**James Don Keller, County Counsel, By Carroll H. Smith,
Deputy, Attorney for Defendant and Respondent
County of San Diego, 1650 Pacific Highway, San Diego
1, California, BElmont 9-7561, Ext. 451.**

**Merideth L. Campbell, City Attorney, Attorney for Defen-
dant and Respondent City of Chula Vista, 615 National
Avenue, National City, California, GRidley 7-4143.**

[fol. 87] **GUY E. STAMPER, called as a witness by and on
behalf of the plaintiff, being first duly sworn, was examined
and testified as follows:**

Direct Examination.

By Mr. Wright:

Q. Would you state your name, please.

A. Guy E. Stamper.

Q. Where do you live, Mr. Stamper?

A. 828 Law Street, San Diego.

Q. In 1947 by whom were you employed?

A. War Assets Administration.

Q. What was your position?

A. Chief of warehousing for the San Diego area.

Q. Where was your office?

A. On August 1 I took—my offices were located at the Convair Plant Two, and also had jurisdiction of the surplus property in Chula Vista at Rohr.

Q. Now, with reference to the surplus property at Chula [fol. 88] Vista, you call that the Rohr—

A. The Rohr plant.

Q. Are you able to identify from the map attached to the title report of the Union Title the areas over which you had jurisdiction?

A. The area that War Assets had property contained in was the property located north of H Street—south of H Street. I am sorry.

Q. South of H Street?

A. South of H Street.

Q. Was that generally known as manufacturing area number one?

A. That I cannot answer. The way we termed it was the manufacturing—was the Rohr plant that they were in operation of. Our plant on the south side of H Street was for dead storage only of surplus property.

Q. And you used all of the property south of H Street?

A. That is correct.

Q. And was owned by the United States? All of that was under your jurisdiction?

A. Under my jurisdiction for warehouse storage.

Q. And did that include a hanger area?

A. Yes, the hanger was located on the extreme southern portion of the plant.

Q. Now, Mr. Stamper, did you at any time move your office to Chula Vista?

[fol. 89] A. Yes. It was in December that we moved our office from Convair Plant Two to Chula Vista, and also set

up a sale center there for the disposal of the residue of the government-owned property.

Q. Now, was Rohr Aircraft during the time that you were using the property as a disposal center—did Rohr Aircraft use or occupy any portion of it?

A. They didn't take—use any portion of it until, I believe, it was around May or June that they rented a small storage area in what we called as building 1 to store various aircraft parts for Boeing Aircraft, because they were unable to ship due to a strike.

Q. Now, when was that? What year?

A. That was in '48.

Q. So during 1947, and for the first part of '48 you, on behalf of War Assets Administration, had complete supervision and control and occupancy of this area?

A. That is correct.

Q. South of H Street to and including the hanger?

A. That is right. There was an—incidentally, there was a chain link fence installed prior to my taking over of this allocation dividing the Chula Vista Rohr plant from government-owned facility.

The Court: On this map which parcel are you pointing to?

The Witness: Your Honor, on this parcel.

The Court: Is it in the green?

[fol. 90] The Witness: Yes, uh-huh. This is H Street dividing line. This is War Assets.

The Court: Outlined in green?

The Witness: Yes, outlined in green.

Mr. Wright: May I have this marked for identification as Plaintiff's 3, I believe?

(The photograph was marked Plaintiff's Exhibit Number 3, for identification.)

By Mr. Wright:

Q. Mr. Stamper, I show you a photograph marked for identification, Plaintiff's 3, and ask you if you can identify the area shown on that photograph?

A. Yes.

Q. Will you tell the Court—

A. There is a—you can plainly see in this photograph a dividing fence running from the clock house all the way down to the end of the area, and the property located on the north of the fence is what we called—

Q. South?

A. —south—south of the fence is building 1, and you can see some government-owned surplus vehicles along the north side.

Q. And the street that runs diagonally from the upper left to the lower right of the picture is what street?

A. This would be National.

Q. Diagonally.

[fol. 91] A. Diagonally? Well, this is H Street.

Q. That is H Street?

A. Yes, uh-huh.

Q. And does that picture—can you point out the fence that was constructed?

A. Yes. The fence is constructed right on each street running east and west.

Q. Does that picture fairly depict the division of the government-owned property from the balance of the Rohr property as it existed when you were located there?

A. Yes, it does.

Mr. Wright: I would offer Plaintiff's Exhibit 3 in evidence.

The Court: Received.

(The photograph marked Plaintiff's Exhibit Number 3 was received in evidence.)

Mr. Wright: No further questions.

Mr. Smith: That is all. No cross examination.

Mr. Wright: Thank you, Mr. Stamper.

(Witness excused.)

Mr. Wright: Mr. Shepard.

S. W. SHEPARD, recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified as follows:

[fol. 92] The Court: Now, would you superimpose this on the map?

Mr. Wright: I intended to by this witness.

The Court: I think that is the way this goes, isn't it?

The Witness: Yes, sir, like this. Actually the map is straight down. This is across here, this line across here. Yes, here is H Street.

Direct Examination.

By Mr. Wright:

Q. Your name?

A. S. W. Shepard, S-h-e-p-a-r-d.

Q. And where do you reside, Mr. Shepard?

A. In San Diego.

Q. And are you presently employed by Rohr Aircraft?

A. I am.

Q. And in what position?

A. I am the Secretary and General Counsel of the company.

Q. When did you first become employed by either the present Rohr Aircraft Company, the plaintiff in this action, or its so-called predecessor, the old Rohr?

A. In April, 1942.

Q. What position did you then hold?

A. Well, I was employed in various positions in legal and quasi legal work between 1942 and 1945. In July of 1945 I was elected Secretary of the company by the Board [fol. 93] of Directors, and have since been re-elected to that position in each year thereafter.

Q. Now, referring to the deeds that have been introduced, and the stipulation, Mr. Shepard, we have Defendants' Exhibit G, a deed from Rohr Aircraft Corporation to Defense Plant Corporation, and Defendants' Exhibit H, a similar deed—no, I am sorry. First is F, 1942. Then G. Exhibit F is referred to as manufacturing area number

one. Do you have before you the maps prepared by the Union Title?

A. No, sir. I now have them, yes, sir.

Q. And can you identify manufacturing area number one? That is the area, is it not, that is bounded on the north by H Street and is depicted in the green color?

A. It is.

Q. Now, on the hanger area, number two, which is described in Defendants' Exhibit G, that lies immediately to the south of the manufacturing area and is depicted in orange, or red, on the map, is it not?

A. It is.

Mr. Wright: At this time, may the Court please, we would like to offer these two maps in evidence as Defendants' 4 and 5.

The Court: You want this one you gave me?

Mr. Wright: Yes.

The Court: All right. Do you want to take it out of the folio? The manufacturing area will be Exhibit Num- [fol. 94] ber 4. Then what you call the hanger area—

Mr. Wright: The hanger area.

The Court: —is Exhibit 5?

Mr. Wright: Exhibit 5.

(The maps were marked Plaintiff's Exhibits Numbers 4 and 5, respectively, and received in evidence.)

By Mr. Wright:

Q. Mr. Shepard, what properties—or, do you know when Rohr Aircraft Corporation started to acquire property in the Chula Vista area?

A. Beginning in 1940.

Q. And how large an area did they acquire eventually?

A. Well, up until what? Up until any particular date?

Q. Well, by 1941.

A. Well, probably by—through 1941, approximately 40 acres. Perhaps an acre or two more than that.

Q. Now, did Rohr Aircraft own any property other than that that was conveyed to Defense Plant Corporation by the deed that is Defendants' B, that is, the deed to—I

mean, the two deeds, F and G, the hanger area and the manufacturing area?

A. Oh, yes, sir.

Q. And the property that Rohr still owned and did not convey is located immediately to the north of H Street?

A. Yes. Rohr Aircraft Corporation owns an area of approximately 15 acres immediately north of what has been [fol. 95] described as manufacturing area number one. In other words, property lying between H and G Streets in Chula Vista, and being on the same side of the railroad right of way as the areas that have been described as manufacturing area number one and the hanger area, number two. In addition to that, Rohr Aircraft Corporation owns other properties to the east of both parcels, or of all three parcels.

Q. Now, in 1942 when these two parcels, the hanger area and the manufacturing area, were conveyed to Defense Plant Corporation, were they at all improved? Did they have any improvements on them?

A. If there were any improvements upon the property they would have been of nominal value.

Q. Will you tell the Court, Mr. Shepard, the history of the dealings with Defense Plant Corporation, the lease that Rohr Aircraft originally acquired, and bring us down to the termination and declaration of the property as surplus?

A. Well, beginning in 1942 Rohr Aircraft Corporation entered into negotiations with Defense Plant Corporation, the result of which was the execution of a lease between Defense Plant Corporation, which I believe at that time was a subsidiary of Reconstruction Finance Corporation, under which a considerable area of land was leased to Rohr Aircraft Corporation. Under the terms of that lease money was provided Rohr Aircraft Corporation to erect improvements upon the land, and Rohr Aircraft Corporation then paid rent to Defense Plant Corporation, the [fol. 96] amount of rent being based on the original cost of the land to the government and the cost of the various types of improvements to the government. In addition to that, there were certain items of equipment and personal

property that also were included within the scope of the lease, and rent was paid to Defense Plant Corporation for those items. The lease was amended several times by expanding the facilities that were rented to the corporation, and in 1945, immediately following the cessation of hostilities, Rohr Aircraft Corporation found that a large proportion of the facilities became immediately nonusable and on October 4, 1945, sent a wire or telegram to Defense Plant Corporation, the Reconstruction Finance Corporation, the Navy Department, and other interested government agencies, invoking the termination clause of that lease. I notice, in referring to documents in front of me, that the wire was sent to Reconstruction Finance Corporation as successor to Defense Plant Corporation. This wire or telegram was confirmed by a letter to the various government agencies. The Reconstruction Finance Corporation on October 8, 1945, acknowledged receipt of that wire, and under letter dated December 20, 1945, Reconstruction Finance Corporation acknowledged cancellation of the lease, effective October 15, 1945.

Q. Now, following cancellation of the lease, Mr. Shepard, what did Rohr Aircraft do with respect to the the manu- [fol. 97] facturing area and the hanger area?

A. It vacated them.

Q. Completely?

A. Completely.

Q. Now, following the time that the property was vacated by Rohr Aircraft Corporation do you know who took possession?

A. Of my personal knowledge, I don't recall how long it was before some custodian physically moved into the property. However, it was only shortly thereafter that the War Assets Administration made a—I guess we could call it a surplus depot out of the property. They brought all sorts of surplus equipment and surplus war commodities into that property and used it as a warehousing area for surplus items of the government. They also erected a fence across the northerly part of their property to separate the government-owned property from the Rohr-owned property.

Mr. Wright: Will you mark these next in order?

The Clerk: Do you want these separate, Mr. Wright?

Mr. Wright: Yes.

(The photographs were marked Plaintiff's Exhibits Numbers 6 and 7, respectively, for identification.)

By Mr. Wright:

Q. Mr. Shepard, do you have any extra copies of the telegram of termination and the letter of December 20, 1945?

[fol. 98] A. I do.

Mr. Campbell: What is the date of that?

Mr. Wright: The telegram to Reconstruction Finance Corporation, dated October 4, 1945, and the acknowledgment dated December 20, 1945.

Mr. Campbell: Would you mind informing me, Mr. Wright, maybe the Court, too, of the materiality of that telegram, when the lease which you have attached to your complaint is dated September 1, 1949?

Mr. Wright: May the Court please, we are, by this line of questioning and this evidence, seeking to show the complete cessation of use of the property by Rohr Aircraft, its taking over by War Assets Administration, which I think factually differentiates the case at bar from that, those facts that were related by the Court in the Continental Motors case. The Court made great reliance there, and placed reliance on the continuity of possession and use as having from the earliest inception remained in Continental Motors. Here we have the original lease from Defense Plant Corporation, RFC, that was terminated. We are by these documents and this testimony showing that following that termination Rohr Aircraft moved completely out, and I will later show how Rohr Aircraft came back in again, but after a considerable lapse of time.

The Court: Did you have your lease reinstated?

Mr. Wright: No, sir. It was a brand new lease.

[fol. 99] The Court: A brand new lease.

Mr. Campbell: I haven't made any objection. I was just asking for clarification at the moment.

The Court: As I understand it, when the war ceased they asked to be released from their lease, and right away they got out of the property. Then after while, probably in 1949, they got a new lease for the same property.

Mr. Wright: Yes, sir.

Mr. Campbell: Well, if the purpose is to show their occupation or interest in this particular property, I have no objection. Other than that, I don't see the materiality. The materiality starts in '49, under which lease they paid their taxes, pursuant to it, and the lease speaks for itself as to who it is with, regardless of what Mr. Shepard or anybody else says. For that purpose I wouldn't raise the objection, if that is counsel's purpose.

Mr. Wright: Our purpose is to show a break in continuity and possession on the part of Rohr Aircraft.

The Court: Well, you may proceed.

Mr. Campbell: I am lost. Subject to a motion to strike?

The Court: Subject to argument later on.

Mr. Campbell: May I reserve a motion to strike, too, your Honor?

The Court: Your objection is that you don't see why we have to be concerned with anything that went on before [fol. 100] 1949?

Mr. Campbell: Yes, that is part of the complaint. Yes, your Honor. That is my point.

The Court: And Mr. Wright—

Mr. Campbell: Thinks we do.

The Court: Wants to show they started out, then they broke off, then they took up again, is that right?

Mr. Wright: Yes, sir.

May I have this telegram marked, and this letter, and this marked?

The Clerk: In order?

Mr. Wright: Yea.

(The telegram and letters were marked Plaintiff's Exhibits Numbers 8, 9 and 10, respectively, for identification.)

By Mr. Wright:

Q. Mr. Shepard, I show you two photographs marked, one marked for identification Plaintiff's 6, and the other 7. Can you identify those photographs for me?

A. Yes, sir. These were photographs—aerial photographs that we arranged to have taken early in 1948. They show an area that covers a portion of the plant owned by Rohr Aircraft Corporation in fee, and a portion of the plant owned by the government, both of which are located at the foot of H Street in Chula Vista.

Mr. Campbell: At this moment I am going to object [fol. 101] to the conclusion of the witness, the portion of the plant owned by the government, the portion owned by Rohr Aircraft, as not being the best evidence. The best evidence is the lease itself, and the deeds, and so forth, of the property.

The Court: Well, we will assume that his word "ownership" referred to the particular building on it, the particular parcel of land.

By Mr. Wright:

Q. Mr. Shepard, can you identify H Street on those pictures?

A. Yes, sir. H Street—do you wish me to point them out to the Court? H Street is on Number 7, is the street that lies here, north.

Q. Will you make a pencil mark—

The Court: You might mark out there on the margin "H Street".

The Witness: I don't have a grease pencil.

The Court: Put an arrow and then "H Street".

The Witness: H Street, and I will put the arrow pointing—that was a poor choice because it might be confused with Bay Boulevard.

The Court: When you have done that, may I see it?

The Witness: Yes, sir. This is H Street, the street that lies here.

By Mr. Wright:

Q. Mr. Shepard, the property lying to the north of H [fol. 102] Street, was that occupied by Rohr Aircraft without a lease?

A. Yes, sir.

The Court: Now, I think you might put a compass on that.

The Witness: Yes, sir.

By Mr. Wright:

Q. And that is in 1947, after the declaration of the property as surplus and the termination of the lease on the hanger area.

A. North is in this direction.

Mr. Smith: Might I see that when the Court finishes with it?

The Court: Yes, but he hasn't told us about it yet.

The Witness: The southerly property line of the Rohr property is an extension of the southerly line of H Street. H Street is not extended to the west beyond the San Diego and Arizona Eastern right of way. The driveway that is to the left of that point is a privately owned—is privately owned property. The first strip is owned by the San Diego and Arizona Eastern Railway. The next strip is owned by the Santa Fe Land Improvement Company. The San Diego and Arizona Eastern Railway comes through here. This next strip of 150 feet is—what you would say, we rent from Santa Fe Land Improvement Company, and then the Rohr-owned property, southerly boundary of which is the southerly extension of H Street as it comes across here to the San Diego Bay. Rohr Aircraft Corporation [fol. 103] occupied the area north of that line and War Assets Administration occupied the area south of that line.

By Mr. Wright:

Q. Mr. Shepard, in 1948 what did you and Rohr Aircraft Corporation do with reference to the property which had been declared surplus and which is identified here as the manufacturing area?

A. We had a need for space for storage purposes and we contacted the War Assets custodian who advised us that if we wished to rent space we would be required to contact War Assets Administration in Los Angeles. We did so and made arrangements to rent various areas in the plant occupied by War Assets Administration. That occupancy on our part on a month-to-month tenancy in various areas began in May of 1948.

Q. And can you tell us what occurred then after, in dealing with both the manufacturing area and the hanger area, that culminated eventually in the lease which is Plaintiff's Exhibit 1 and attached as Exhibit A to the complaint?

A. We began renting areas in this War Asset controlled plant—if I am prohibited from using the word government-owned—and these areas increased in size, eventually taking over entire buildings. As of the 23rd day of August, 1948, we entered into a document called an interim lease with, if I may I will read it—would you like me to read the name of the lessor on that lease?

[fol. 104] Q. If you would.

A. Between Reconstruction Finance Corporation, a corporation duly organized and existing under and by virtue of the laws of the United States, which said corporation, pursuant to the provisions of Public Law 109, 79th Congress, approved on June 30, 1945, has succeeded to all of the rights and assets of Defense Plant Corporation, acting by and through War Assets Administration under and pursuant to reorganization plan 1 of 1947 (12-FR, 4534) and the powers and authority prescribed in the provisions of Surplus Property Act of 1944 (58 Statutes 765) and WAA regulation number 1, as amended, hereinafter referred to as lessor. The purpose of this document was to confirm on a month-to-month basis the occupancy by Rohr Aircraft Corporation of certain areas in the plant that lies south of H Street.

Mr. Campbell: May I inquire the date of the document you just read from?

The Witness: The 23rd day of August, 1948.

Mr. Smith: '48, did you say?

The Witness: '48.

Mr. Campbell: That is still prior to the lease?

The Witness: Yes, sir.

By Mr. Wright:

Q. And thereafter did you enter into negotiations with the War Assets Administration respecting the hanger area?

A. Yes, sir. Prior to that, however, we entered into [fol. 105] further negotiations with War Assets Administration which resulted in supplement number 1 to this interim lease, which was dated the 24th day of November, 1948, which had the effect of granting to Rohr Aircraft Corporation occupancy of the entire manufacturing area number one. Beginning in the spring of 1949 we found need to expand our operations into the hanger area, and again we contacted War Assets Administration and negotiated with them, resulting in the execution of a document dated the 1st day of March, 1949, which was an interim lease covering the hanger area.

Mr. Smith: What is the date of that document?

The Witness: March 1, 1949.

By Mr. Wright:

Q. Now, Mr. Shepard—

A. —but these—I might add that these leases, or these interim leases were on a month-to-month tenancy basis. We then entered into negotiations with War Assets Administration to occupy the property on a firm lease for five years. These interim leases then were superseded by the document which is Exhibit 1 to the plaintiff's, or in the plaintiff's case, which is the—I don't have it in front of me and I don't have the official title of it.

The Court: That is the September lease?

The Witness: Yes, sir.

The Court: September 1, 1949.

The Witness: Yes, sir.

[fol. 106] By Mr. Wright:

Q. Now, Mr. Shepard, in the negotiation of these interim occupancy permits, and in the negotiation of the lease dated September 1, 1949, which is Plaintiff's Exhibit 1, did you at any time have any dealings with the Reconstruction Finance Corporation?

Mr. Smith: We object to that question as being—

Mr. Campbell: May we have the question read again, your Honor? May I have the reporter read that question?

The Court: There is everybody talking at once here.

(Whereupon the last pending question was read by the reporter.)

Mr. Campbell: Object to that as not the best evidence. The lease itself, as far as that question is concerned—

The Court: You need some further documents.

Mr. Wright: No, sir. My question is addressed to the identity of the personnel with whom Mr. Shepard dealt.

The Court: Without going into the conversations?

Mr. Wright: Without going into—

Mr. Smith: I want to make further objection to that. That is a conclusion and opinion there. It depends on the signature and execution of the document itself who the signatory parties were.

The Court: Whom they represented. Well, he may tell us the names of the persons and then we will have to establish their connections. Is that what you want?

[fol. 107] Mr. Campbell: That isn't the question asked. I will make the objection, the question is vague, ambiguous, compound and complex. There are some papers behind it, and the lease, and so forth, here.

The Court: I suggest instead of asking about dealings, ask him if he had any further contact with certain individuals, and name them so we can find out whether they are connected with RFC, or something else.

By Mr. Wright:

Q. Mr. Shepard, in the negotiation of the lease dated September 1, 1949, whom did you contact?

A: There were many people with whom we made contact at that time. The firm lease was negotiated after contacts had been made with individuals who represented themselves as being connected—

Mr. Campbell: Just a moment. I object to that as hearsay.

The Court: Sustained.

The Witness: We were requested to write letters—

Mr. Campbell: Object to that as not responsive to any question asked.

The Court: Nothing is pending now, but we have the lease here and there is a Donn A. Biggs signing on behalf of somebody there and Mr.—I presume it is Mr. J. E. Rheim for Rohr Aircraft Corporation, and also Mr. S. W. Shepard.

[fol. 108] Mr. Smith: And I think if his Honor will turn to the next page of the lease he will see his authority to sign it.

The Court: Then there is a notary public certificate.

Mr. Smith: So that this testimony is not the best evidence. The lease speaks for itself. It is in evidence.

By Mr. Wright:

Q. Mr. Shepard, did you at any time in the negotiation of this lease contact any person known to you to be an officer or employee of Reconstruction Finance Company—

Mr. Campbell: Object.

Mr. Smith: Object to that question. Same grounds as before.

The Witness: Would you like me to tell you the names written on the door of the people we contacted?

Mr. Smith: Just a moment.

The Court: Well, of course, they are objecting to these conclusions. I am wondering if it is possible to establish by some competent proof just actually who these people were, and what organizations they were representatives of.

Mr. Campbell: May I be heard?

Mr. Wright: Just a moment, if I may. If the Court please, I will not pursue this much further, because the

lease and the stipulation cover the fact that the signers, parties signatory on behalf of the government, were officers and employees of the War Assets Administration, not of the RFC. There are certificates of authority—the [fol. 109] delegation of authority that are attached to the lease commencing at pages 11, 12, 13, 14, 15, all detail the authority of the parties signatory to the lease.

Mr. Smith: Even Mr. Shepard's authority here to act as Secretary of Rohr Aircraft Corporation, that is in there, so all this testimony is improper, if your Honor please.

The Court: Well, counsel says he is not going to pursue it any more.

Mr. Wright: No, I will not pursue it.

Mr. Campbell: I think he was just trying to give us a workout.

The Court: Just trying to see if you were awake.

By Mr. Wright:

Q. Mr. Shepard, turning now to the tax bills that are attached as Exhibit B, and there are three of them, to the complaint, and the tax bills that are attached to the complaint as Exhibit F, and there are two of those, I refer particularly to the tax bill number 4373 of the County, tax bill number 4375 of the County, tax bill number 4303-53 of the County, tax bill number 5403—54 of the County, and the City of Chula Vista tax bill number 4360 and number 4317. Can you tell us whether or not the Rohr Aircraft Corporation paid the first installment of the taxes shown on those tax bills?

A. It did.

[fol. 110] Q. And in what amount?

A. Could I refer to the tax bills, or the receipts for that information, please?

The Court: Do you want the original?

The Witness: Yes. Thank you. On tax bill number 4373 the amount of the first installment paid was \$7,201.50.

Mr. Smith: Now, if the Court please, I fail to see the materiality. I object to this evidence on the ground that it

is immaterial. The tax bills are in evidence. They speak for themselves. They are all stipulated to. What is the purpose of taking additional testimony that is already stipulated to?

Mr. Wright: If the Court please, the separate affirmative defense raised by both defendants sets forth an offset, and they claim an offset for possessory interest. It is our purpose here, since there is no claim for refund by reason of the first installment of these taxes, and there is no admission in the answer or the pleadings addressed to these first installments of taxes, that we must show as a defense to the claimed equitable offset the fact that the taxes for the first installment were paid and are not claimed by way of refund. Our only claim for refund for those years, those portions of the year is addressed to the second installment of the 1951 and '2.

Mr. Smith: I renew my objection, if the Court please, incompetent, irrelevant and immaterial.

[fol. 111] Mr. Campbell: My point was to inquire of Mr. Wright, you have now completed your plaintiff's case and are now putting a defense in to our affirmative defense. Is that what you are doing?

Mr. Wright: The factual background, yes.

Mr. Campbell: I mean, I was under the impression you had completed your case and we have a defense and then you come in and show the—

The Court: I think the procedure would be for the party offering the defense to go ahead and substantiate it and then of course you could—

Mr. Campbell: I don't object to the going out of order if I know that is the purpose.

Mr. Wright: If the Court please, I was trying to save Mr. Shepard's time, and the facts on the equitable offset by way of defense have been covered by the written stipulation.

The Court: All right.

Mr. Wright: And with the counsel and Court's approval, I would like to, out of order, ask two questions of Mr. Shepard.

The Court: We are going to have to adjourn pretty soon, if you could hurry up with it.

Mr. Wright: I wanted to obviate Mr. Shepard's coming back.

The Witness: On tax bill number 4375, the first installment [fol. 112] ment in the amount of \$10,358.70 was paid by Rohr Aircraft Corporation. On tax bill number 5403-53, first installment in the amount of \$33 was paid by Rohr Aircraft Corporation. On tax bill number 5403-54 first installment in the amount of \$1,016.10 was paid by Rohr Aircraft Corporation. On the City of Chula Vista tax bill number 4378, first installment taxes in the amount of \$2,122.12 was paid by Rohr Aircraft Corporation, and on tax bill number 4380 of the City of Chula Vista, first installment taxes in the amount of \$3,336.61 was paid by Rohr Aircraft Corporation.

By Mr. Wright:

Q. Now one more question, Mr. Shepard: Under the provisions of Public Law 388, and for the tax year 1955-56, were any taxes paid to the County of San Diego by Rohr Aircraft with reference to the property involved in this litigation?

Mr. Smith: Object; incompetent, irrelevant and immaterial.

The Court: Overruled.

The Witness: Tax bills for that tax year were issued and in making payment against them Rohr Aircraft Corporation was requested by General Services Administration to accompany the payment with a statement. Would you like me to read the statement?

By Mr. Wright:

[fol. 113] Q. I think, Mr. Shepard, that that is as far as we can go here, the fact that the taxes as assessed in the amount of the assessment were paid by Rohr Aircraft Corporation at the request of the General Services Administration.

The Court: This trial will be resumed—is that all now?
Mr. Wright: That is all my questions.

The Court: Do you have some?

Mr. Smith: I have some cross examination.

The Court: Would it be convenient for you to come back Monday?

The Witness: Is this off the record for the moment? We have an annual meeting of stockholders on Tuesday morning, Judge, and as the Corporate Secretary I have a thousand other details to attend to. If it could be avoided I would appreciate it very much. I don't wish to inconvenience the Court. If we could go on for a few more moments I would appreciate it very much.

The Court: Well, we have been going here since 9:00 o'clock this morning, and we get pretty tired after a while.

Mr. Campbell: I doubt if it will take over a half hour.

The Court: Your cross examination will take over a half hour?

Mr. Campbell: Between the two of us, yes.

The Court: Then that is impossible. We will adjourn [fol. 114] until 10:00 o'clock Monday morning.

(Whereupon court recessed at 4:34 o'clock P. M., to 10:00 o'clock A. M., Monday, December 10, 1956.)

[fol. 115]

San Diego, California,

Monday, December 10, 1956, 10:00 A.M.

The Court: Good morning. Proceed.

Mr. Wright: I believe Mr. Shepard was on the stand and the plaintiff, your Honor, had concluded their direct examination.

Mr. Smith: That is correct.

S. W. SHEPARD resumed the stand and testified further as follows:

Cross Examination.

The Court: Do you need any of your books?

The Witness: I don't know, sir. I will find out.

The Court: All right.

By Mr. Smith:

Q. In what business is the Rohr Corporation engaged?

A. It is a manufacturer of aircraft parts and assemblies.

Q. As I understand it, you manufacture these parts and equipment for the United States Government in certain cases, and in others as subcontractors for prime contractors with the United States Government?

A. That is correct.

Q. Do you likewise manufacture any such parts and equipment for private corporations?

A. Yes, sir.

[fol. 116] Q. Now, those purposes are the same purposes which the former Rohr Aircraft Corporation performed?

A. Yes, sir.

Q. Directing your attention to the year 1941, now, let's see, that was the year in which the Rohr Aircraft Corporation acquired the subject property, was it not?

A. I believe it was.

Q. Refreshing your recollection, I will direct your attention to Defendants' Exhibit E. I believe that is the deed by which the subject properties were acquired by the Rohr Aircraft Corporation.

A. Yes, sir.

Q. Then it is true, wasn't it, that in 1942 in October the Rohr Aircraft Corporation deeded the manufacturing area described in the complaint to the Defense Plant Corporation, didn't they?

A. Yes, sir.

Q. I will refer to them, if it is more convenient to you, as manufacturing area and hanger area rather than the legal description on the assessment roll.

A. All right.

Q. Then on October 28 of the next year, 1943, the Rohr Aircraft conveyed the hanger area to Defense Plant Corporation, isn't that true?

A. Yes, sir.

Q. So that we have this situation then, isn't it, in 1941 [fol. 117] Rohr Aircraft buys the subject properties from Santa Fe Land and Improvement Company, and then in

October of '42 it conveys the manufacturing area to Defense Plant Corporation, and in October of the next year, '43, conveys the hanger area to Defense Plant Corporation. Is that right?

A. Yes, sir.

Q. So that beginning in 1942 we have the Defense Plant Corporation as the legal owners of the properties then?

A. What properties, sir?

Q. Of one of the properties, that is.

A. Yes.

Q. And in '43 of both of the properties.

A. Yes.

Q. Now, from '43 to 1945 do you know what use was made of the subject properties? From 1943 to 1945?

A. Yes.

Q. What was that use?

A. It was occupied by Rohr Aircraft Corporation under a lease from Defense Plant Corporation.

Q. Now, I believe you testified that there was a time in there when your lease was vacated and the subject property was used as a surplus depot for war materials, is that right?

A. That is right.

Q. And—

A. May I ask a question?

[fol. 118] Q. Just a moment.

A. Mr. Reporter, would you please repeat that question?

Q. Oh, you wish to correct your answer?

A. I wish to listen to the question again.

(Whereupon the last pending question was read by the reporter.)

A. All right.

Q. But when we come down to the period of your present lease beginning September 1, '49, and right down to the present time, the use of the property has been for the purposes of the Rohr Aircraft Corporation, as you have just testified here to their purposes, is that right?

A. That is correct.

Q. And I believe you testified that in May of 1948 this manufacturing area was rented on a month-to-month basis?

A. A portion of it.

Q. Yes. Now, was that the earliest resumption by Rohr Aircraft of the use of either of the properties after that period where they were vacated for a time?

A. Yes, sir.

Q. There was no use at all by Rohr in '45 and '46?

A. Oh, yes, sir, there was use in 1945. We—

Q. In '46?

A. I don't recall any use in 1946 or 1947.

Q. Would it assist you in your answer if you were informed that Rohr was assessed for improvements on those properties in 1946 and 1947?

A. It might.

Q. Would that assist you in your answer?

A. It might.

Q. So that it is possible that there might have been some use by Rohr of the properties in those years?

A. Perhaps I could—I can think of a situation where Rohr—where it might be considered that Rohr may have had a use of the property. The situation is the spur track that serves the Rohr-owned plant. This spur track goes through the manufacturing area, but that was not considered part of the manufacturing area about which we are discussing here. That is a separate easement that was granted to Defense Plant Corporation on the Rohr property, and there was a side track agreement entered into between the company and—I have forgotten now who the other contracting party was—giving Rohr permission to use the spur track through this manufacturing area. There were some improvements that Rohr had constructed upon—some leasehold improvements that Rohr had constructed upon the property during the war years, but as I recall now they had all been removed—either removed, or had been abandoned by 1946, so if you have other items wherein Rohr was assessed for improvements against the property I would appreciate being advised of that.

[fol. 120] Q. And these improvements were assessed to these particular—one of these particular parcels of land, one or both?

A. Well, I don't recall. If you could identify them I am sure I might remember them.

Q. The location of these two properties, the manufacturing area and the hanger area, respectively, I believe according to your maps and your pictures are south of H Street, is that right?

A. Yes.

Q. Both of them?

A. Yes, sir.

Q. Then does Rohr Aircraft own or operate property north of H Street, or on—

A. Yes, sir.

Q. —on either side?

A. Yes, sir.

Q. And all of the properties which Rohr operate are for the general purposes of the corporation as you have designated?

A. Yes.

Mr. Smith: Do you care to ask any questions, Mr. Campbell?

Cross Examination.

By Mr. Campbell:

[fol. 121] Q. Mr. Shepard, you are an attorney at law, are you not?

A. Yes, sir.

Q. And official legal advisor of Rohr Aircraft?

A. Excuse me?

Q. You are the official legal advisor of Rohr Aircraft?

A. Yes.

Q. Among your duties as Secretary. You examined this lease dated September 1, 1949, between the Reconstruction Finance Corporation and Rohr Aircraft, did you not, before attesting it?

A. Yes.

Q. You were familiar with the provisions in the lease that Rohr Aircraft was to pay all taxes assessed to the lessor, the Reconstruction Finance Corporation?

A. That was interpreted as being legally assessed against the property, yes.

Q. Pardon?

A. Yes, and that was determined to be taxes legally assessed against the property.

Q. And you did pay those taxes?

A. We paid tax bills that were issued against the property, yes.

Q. And some of them were assessed to Reconstruction Finance Corporation, some to the Defense Plant Corporation, some to Rohr Aircraft?

[fol. 122] A. I don't recall any assessed to Defense Plant Corporation. I believe the tax bills—are you speaking of the period from September 1, '49, and following?

Q. No. I am speaking of the Defense Plant prior to '49. Well, I will withdraw that question and put it this way: The Defense Plant Corporation was merged into Reconstruction Finance Corporation, to your knowledge, was it not, to the best of your knowledge?

Mr. Wright: I object, your Honor. That is a matter of public law, a matter which this Court can take judicial notice. This witness, his statement is merely a conclusion.

The Court: I think all of us can agree that Reconstruction Finance Corporation succeeded the Defense Plant Corporation.

By Mr. Campbell:

Q. As far as you knew, the record title to the land in question was in the Reconstruction Finance Corporation from the time, at least, of the execution of the lease in 1949 up to March 17, I believe, of 1955?

A. So far as I knew, that is what our lease indicated the record owner of the property to be.

Q. And during the term of the lease Rohr Aircraft was still operating and using the property as it had prior to the lease, was it not, same purposes?

A. Yes. You are referring to the September 1, 1949, lease?

[fol. 123] Q. Yes.

A. Yes.

Q. And still using it now?

A. Yes.

Q. Were the tax bills after the date of the lease mailed to Rohr Aircraft Corporation, or were they mailed to the Reconstruction Finance Corporation?

A. I don't know. I can answer the first part of that question, they were not mailed to Rohr Aircraft Corporation except by War Assets Administration.

Q. You don't—

A. They were mailed to Rohr Aircraft Corporation by War Surplus Administration. How they got them I don't know.

Q. You don't know how War Assets got them?

A. No, sir.

Mr. Campbell: That is all.

Mr. Smith: That is all.

Mr. Wright: That is all.

(Witness excused.)

Mr. Smith: Do you rest?

Mr. Wright: May it please the Court, there is a stipulation here that reserves to plaintiff the motion to strike with respect to certain matters that are contained in the defendant County's exhibits, and except for the making of that motion to strike we have no—

Mr. Smith: You have no further testimony?

[fol. 124] Mr. Wright: We have no further testimony.

Mr. Smith: If you have no objection, and it meets with the Court's approval, I think we can discuss that after—I have a defense witness I would like to put on.

Mr. Wright: By resting then I mean I have no further testimony to offer.

The Court: Very well.

Mr. Smith: The defendant will call Mrs. Dolores Jacques.

DOLORIS JACQUES, called as a witness by and on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Smith:

Q. Will you state your name, please.

A. Dolores Jacques.

Q. Where do you live?

A. 204 West Lewis Street.

Q. San Diego?

A. San Diego.

Q. You are in charge of the Redemption Department of the County Auditor's office, is that right, Mrs. Jacques?

A. Yes.

[fol. 125] Q. How long have you had such position?

A. Approximately ten years.

Q. And as such you have the custody and control of the past years' assessment records of the County of San Diego?

A. Yes.

Q. Those records are now kept in microfilm, are they not?

A. Yes.

Q. Did you, Mrs. Jacques, at my request, over the week end inspect those past years' assessment records from the year 1942-43 through 1949-50?

A. Yes.

Q. With a view to ascertaining whether or not certain property description which I furnished you was on those rolls?

A. Yes.

Q. I will show you the property descriptions attached as Exhibit A to the complaint in this lawsuit, Mrs. Jacques, and ask you if these were the descriptions which I submitted to you for that inspection?

A. Yes, they are.

Q. And you made that inspection and the search?

A. Yes.

Q. And did you ascertain who the assessee of the properties were in those respective years?

A. Yes, I did.

[fol. 126] Q. Did you make any memorandum or compilation of that figure?

A. I did, and I have a copy here.

Q. Have you a copy of it with you?

A. Yes.

Q. I will show you this two-page document and ask you, this is your memorandum which you compiled?

A. It is.

Q. And that is your own typewriting?

A. Yes.

Q. And done under—oh, you did it yourself?

A. Yes.

Mr. Smith: I would like to offer that in evidence, if the Court please, as defendants' exhibit next.

Mr. Wright: May the Court please, as far as this evidence goes, and to the extent that it purports to show merely the name of the person assessed, I will stipulate that the rolls would so show. However, there are certain items of property that claim to have been assessed to Rohr Aircraft Corporation on certain of those years. Without any information as to what property, that was, what the assessment itself was for, we have no basis. I don't know the purpose for which counsel is offering this. It may be that we can stipulate with him. But insofar as the evidence would tend to support an inference that during those years Rohr was occupying certain of this area, I think we should [fol. 127] have an opportunity to examine what the property that they allege was located on that property for, and based on that I think the objection that I am now going to make, namely, that the records themselves are the best evidence as to the nature of the assessment and what the property was—we certainly would stipulate that the Assessor's records do show that Rohr Aircraft was assessed, but beyond that—if that is the extent of this evidence I am in agreement—but beyond that I would make my objection that the records themselves as to the description and identity of the property is the best evidence.

Mr. Smith: If the Court please, I can drag down here these microfilms and set up the equipment and produce the very assessment itself, and go through all that if counsel insists upon it, but all I have as my purpose here was to show the assesseees of the properties in the respective years, and what it was that was assessed, just land and improvements, and my offer, I think, is pertinent and material further because, as I stated to your Honor from that public law and that committee report to the President, it is a matter of judicial notice that War Assets Administration could not and did not pay local taxes, but RFC did, and Defense Plant Corporation did and could, and that the Congressional intent and purpose was that that be continued, that RFC pay those taxes while properties were in custody of War Assets. That was the Congressional [fol. 128] intent, and I think this document, this collection here showing who the assesseees were in those years, supports that. I think it is material for that reason, as well as to clear up what Mr. Shepard's testimony was, that there were improvements on the properties belonging to Rohr during the years '45 and '46. This corroborates it. Now, I can produce—prove that if counsel insists by bringing down the, as I say, the microfilm itself here and setting them up and demonstrating it, but Mrs. Jacques is in charge of the records, she has inspected them over the week end, she run them through the microfilm machine, and she has taken off this information, and she is here and present and she knows what she saw on the microfilm and can tell us firsthand knowledge. Now, it is to avoid that. If counsel wants to put us to that detail—

The Court: Well, the practice of putting records on microfilm is very good as far as storage, but as far as inspection in court, it offers a practical problem. Now, we have a microfilm projector up there in—what room is that in?

The Clerk: The file room, they call it, upstairs file room.

The Court: And if you bring the film down, counsel and even the Court could go up there and view it.

Mr. Wright: May the Court please, I would like to restate, if I may, my position. I don't care to impinge on

[fol. 129] this Court's time, or make trouble for counsel. As far as the identity of Defense Plant Corporation, of Reconstruction Finance Corporation, as the assessee for the years here involved of the properties that are the subject of the lease description, I am willing to stipulate that. Now, there are, with respect to the manufacturing area, on the document that the County has here offered, an indication that certain improvements during certain years were assessed to Rohr Aircraft, and it is as to those only that my objection is lodged, and I may not have any objection if we can identify and explain and be given an opportunity to explain what those improvements were, and how came they to be assessed to Rohr Aircraft. Now, I rather assume that counsel's purpose in offering that is to show that to a certain degree, at any rate, Rohr Aircraft Corporation had a use of the manufacturing area during the latter part of 1945-46 and—1945, '46 and '47. That is a use; that if there was any property there that belonged to Rohr, we would like an opportunity of explaining, and it is only to that that my objection is addressed. As far as the fact that the properties here which have been legally described and been depicted on the maps as the hanger area and the manufacturing area, as the description is contained in the lease of September 1, 1949, I have absolutely no objection to this offer.

Mr. Smith: It seems to me, if the Court please, the [fol. 130] document should go in. I have no objection to counsel if he wants to produce witnesses to explain that use. He can go as far as he likes. But my evidence is pertinent and material.

The Court: Well, as I understand it then, this may be received to show that properties were assessed and that they were assessed to the assessee in the column on the right-hand side.

Mr. Smith: That is right.

Mr. Wright: With the exception—pardon.

The Court: But the plaintiff reserves the right to show that if there was actually a use there, that it was in a certain manner conducted, is that right?

Mr. Wright: No, sir, your Honor. I would like to reserve an objection to the improvement assessments shown

there on the ground that the best evidence should be offered. If counsel wants to offer that by way of rebuttal, I think we should have the original records themselves, or this should be augmented, and I will stipulate once we find out what the property is, I think we should know what the assessment is, we have it identified with respect to the property that is assessed to the Reconstruction Finance Corporation, that is, the property that is described in Plaintiff's Exhibit A, but we have no description for the property that is assessed to Rohr Aircraft in those years, and as to that I offer my objection, but I am willing to stipulate [fol. 131] late when the assessments themselves, or the property is described—

The Court: Well, as I understand the testimony of Mr. Shepard here this morning, it is to the effect that Rohr during those years in question did function on other property. Is it contended by the County Counsel that that property assessed to Rohr Aircraft is other property than the plant, manufacturing plant, and the hanger section?

Mr. Smith: I am offering that, if your Honor please, simply to show that there was improvements assessed to Rohr Aircraft Corporation on these subject properties during the years '45, '46, '47, and prior and subsequent thereto, improvements assessed to Rohr. That is all. Now, this objection that counsel appears to have arrived at seems to me is about matter peculiarly within his own knowledge. Now, it is common knowledge that we can't tell from the assessment roll the nature and breakdown of the items of improvements. We have a lump sum valuation on the roll. The roll doesn't tell us, and he wants to go into the itemization of those improvements to see what they were, what each one was assessed for, and then he is going to tell us maybe what it was used for, but I am offering this for its worth here, particularly during years 1945, '46 and '47, where they make a point of a hiatus, a cessation, a gap in the use and purpose of the property generally, that there were improvements during all of that time assessed to this [fol. 132] corporation on the rolls of this County. Now, let him make what inferences he wants to, and I will make what inference I want to in argument to the Court, but the fact remains that they were there.

The Court: Well, as far as this document prepared by Mrs. Jacques is concerned, it was taken from the film?

Mr. Smith: That is right.

The Court: Is that right?

The Witness: Yes.

The Court: Now, do you want the film produced?

Mr. Wright: Insofar as it relates to assessments of improvements to Rohr Aircraft Corporation, I offer my objection.

The Court: Well then—

Mr. Wright: Insofar as it relates to Mrs. Jacques having said she took the description of the property, that is fine as far as the property that was owned there by the Reconstruction Finance Corporation and Defense Plant. We have identified that. That is the subject of this action, the property that is described here. Now, as far as the improvements, those are properties as concerning which we have here no description. The Assessor, on his roll, has for his own purposes said that they are located on this property. I don't know where he got the information, that is, the Assessor in preparing the roll.

Mr. Smith: That is the law, Mr. Wright. He had to do [fol. 133] that. Improvements are assessed to the land on which they are located and he must assess the land to the property of the legal owner of record.

The Court: Shall we proceed, and accept this information for what it is worth from the records, and allow the plaintiff to show by his records what the improvements were, and what use they were made?

Mr. Smith: I have no objection to that.

The Court: Would you like to proceed in that fashion?

Mr. Smith: I will ask her.

By Mr. Smith:

Q. The roll, of course, won't show the nature of these improvements, will it, Mrs. Jacques?

A. No, it won't.

Q. It will have a lump sum assessment on it?

A. That is right.

Q. That is right. This is just the way the record shows, is it not?

A. Yes.

The Court: Could you have any more information if you actually had the film than you get by this document here?

By Mr. Smith:

Q. As to the assessee and the nature of the assessment itself, Mrs. Jacques?

A. No.

Q. If you had the film here it wouldn't show any more? [fol. 134] A. No. It would show the values which we do not show.

Q. Respectively, land and improvements?

A. That is right.

Q. But improvements not broken down?

A. No, in lump sums.

Mr. Wright: May I make one statement to the Court? The additional items that appear on the rolls, such as the value and the assessment number, will serve as a basis by which the assets themselves could be identified. We have no basis here from this statement, this breakdown, or summary, to identify the particular improvements that the County claims are on the roll. We are therefore not in a position except by guess to rebut any inference of a use being made during those years in question.

The Court: Well, these rolls after they are filmed, what is done with them?

The Witness: Pardon?

The Court: You may answer.

The Witness: They are stored in what used to be our Anthony Home in Mission Valley. It is possible to secure them, but it would take quite a bit of time.

Mr. Smith: If the Court please, I don't see the producing of the microfilm is going to assist the counsel any more than this in what he wants to rebut this with.

The Court: Well, Mr. Smith, he wants to object. It is a valid objection and it must be sustained because it is a [fol. 135] rule of evidence.

Mr. Campbell: May I make one inquiry, your Honor?

The Court: Yes.

Mr. Campbell: From the assessment roll the facts as you have shown them there are placed upon a tax bill?

The Witness: That is right.

Mr. Campbell: And the tax bill shows the paragraph number of the assessee, of the Assessor's map, and so forth, what the property is?

The Witness: Yes.

Mr. Campbell: All right. May we—

The Court: Is there any more information on the film than would be ascertained from this document that you prepared and the tax bill in conjunction with it?

Mr. Campbell: Outside the valuation?

The Witness: The valuation and the address, the dates that the accounts were paid.

Mr. Campbell: I mean, here is a factor. I don't think it has been in inquiry. We could put Mr. Shepard back. If he received the tax bills for those prior years he certainly has them. I am just looking at the exhibit on the complaint and it shows improvement values, land values, address, paragraph number, and so forth.

The Court: We will ask Mr. Wright if you can get your information from a review of the tax bills and this document prepared by Mrs. Jacques.

[fol. 136] **Mr. Wright:** It is possible. I would like to reserve an objection, if I could. I don't like to take up the time here, but my objection again, if the Court please, is based solely on those properties that are shown there assessed to Rohr Aircraft. I have no objection to the document. As a matter of fact, I will stipulate that the properties in the years there involved that are described in the complaint on file here were assessed to the persons shown there, but insofar as the improvements are concerned, those are not involved in this action and I would have the further objection, if the Court please, that the fact that certain leasehold improvements may have been assessed to Rohr Aircraft Corporation is entirely immaterial.

The Court: Well, of course, the argument is centered around use, isn't it?

Mr. Wright: Yes, sir.

The Court: And isn't there some way we could find out what the use was?

Mr. Campbell: Well, may I inquire here, I think I see the purpose of your objection, but as far as the films themselves go, that is an extract to show the improvements, is that right? In other words, if he had the films here themselves they would add nothing to what was there and they would be admissible, wouldn't they?

Mr. Wright: I am not prepared to say they would not add anything to what is there, because I don't know what [fol. 137] is on the records. I haven't seen the records and—

Mr. Smith: You have seen the tax bills every year, and tax bills take it right off the record, Mr. Wright.

Mr. Wright: If the Court please, I reserve my objection as indicated with reference to the improvements. As to the balance I have no objection.

The Court: All right, produce the film then to show what the improvements are.

Mr. Smith: That would have to take a little time to do that, if your Honor please. I can't do it right just like this. We would have to request a reasonable continuance until I can bring them.

The Court: Wait a minute. Counsel is conferring with Mr. Shepard. He was talking while you were having a conference there, and I think you didn't catch what he said.

Mr. Wright: I apologize, your Honor.

The Court: He was saying that if you want the film we would have to have a continuance in order to get the film here.

Mr. Wright: I think, if the Court please, what Mr. Shepard was indicating to me by that conference, it may be possible to obviate this during the course of the morning recess if he could make a phone call and ascertain certain facts. We may be able to clear up this whole question.

The Court: Very well. Then we will have this marked for identification and go on with something else.

[fol. 138] The Clerk: J.

The Court: Defendants' J.

(The interdepartmental correspondence dated December 8, 1956, from County Auditor was marked Defendants' Exhibit J, for identification.)

Mr. Smith: It is admitted only for identification, if your Honor please.

The Court: Yes, because didn't you just hear what he said about it?

Mr. Smith: Yes. That is all. Cross examine.

Mr. Wright: No questions.

(Witness excused.)

Mr. Smith: That is all. Defense rests subject to the same position of plaintiff, to reserve argument and possible introduction of evidence on the question of the motion to strike a portion of the possessory interest document.

Mr. Wright: Before we get into that, may the Court please, Mr. Shepard advises that on a question by Mr. Campbell he may have been slightly in error, and wishes to correct his answer.

The Court: Come forward.

S. W. SHEPARD resumed the stand and testified further as follows:

The Witness: In reply to one question from Mr. Campbell, he asked me from whom we received the tax bills, [fol. 139] and I replied that the tax bills had been received from War Assets Administration. In addition, we have received tax bills from General Services Administration.

That is all.

Recross examination.

By Mr. Campbell:

Q. Have you received any from the Reconstruction Finance Corporation?

A. I don't recall any correspondence in the file from Reconstruction Finance Corporation sending us tax bills.

By Mr. Smith:

Q. Mr. Shepard, General Services Administration is simply the successor of War Assets, is it not? That is a matter of judicial notice, isn't it?

A. Well, sir, I am not sure I can answer that fully. General Services Administration is a department of the United States Government that has taken over, among other things, some of the—at least some of the duties of the War Assets Administration.

By Mr. Campbell:

Q. You did receive tax bills for the years from 1942 through 1949-50, did you not, both on land and improvements?

A. Are you referring to the subject property here?

Q. Subject property, yes, or—

A. Or Rohr?

[fol. 140] Q. Yes, subject property.

A. I don't recall. I am confident that we did not receive tax bills for the period of '46 through—for the '46-47 year. I don't recall offhand whether we received tax bills for the '45-46 year or not.

Q. Or whether you paid taxes or not?

A. Or whether we paid taxes or not. Now, during the years that our DPC lease was in effect—

Q. Whose lease?

A. The Defense Plant Corporation lease was in effect, since there was an obligation under that lease to pay the taxes, I assume the tax bills were rendered to us and were paid, but I don't know that of my own knowledge, as I say.

Q. The same as on the 1949 lease, there is an obligation to pay taxes, and you assume they were received and paid, too, is that correct?

A. Yes, sir.

Q. Those tax bills that you received, which are part of the complaint, were paid by Rohr Aircraft, were they not?

A. Yes, sir.

Q. And they show improvements and land both together, do they not?

A. I don't recall. I think both land and improvements are shown, but separately on the bills.

Q. That is correct, but total valuation is also shown?

A. Yes.

[fol. 141] Q. I mean, and you paid the amount stated down here due as taxes?

A. Yes.

Q. For both land and improvements?

A. Yes.

Q. And you assume you did that prior to '49, too?

A. No, sir; I don't assume that.

Q. You don't?

A. I assume that prior to 1945, but not in the intervening period between 1945 and '49.

Q. And during that period you have no independent recollection of who paid the taxes?

A. I don't have any independent recollection if taxes were assessed against Rohr Aircraft Corporation. It is my understanding and belief they were not, or at least that Rohr Aircraft Corporation paid any taxes during that period. What the Assessor's records may show as to who the assessee was, I don't know. I don't believe we paid any taxes on the subject property.

The Court: Can you find the tax bill for any of those items on there?

Mr. Smith: No. That is prior to the complaint, your Honor. I can find out from the Tax Collector's office who actually paid these taxes for these years, but I don't think that is particularly material.

The Witness: I think it would be very interesting.

[fol. 142] Mr. Smith: That is a matter of independent search of the Tax Collector to find out who actually paid the taxes.

The Court: Anything further?

Mr. Wright: No. Mr. Shepard merely wanted to correct his answer, your Honor.

The Court: You may step down.

The Witness: Thank you.

(Witness excused.)

Mr. Wright: There is raised, if the Court please, by the answer of defendant City of San Diego and by the answer of defendant—I mean, County of San Diego, and by the answer of the defendant City of Chula Vista a separate affirmative defense. That defense is predicated on this principle, that if the plaintiff is entitled to recover back these taxes because the land which was assessed, land and improvements which were assessed in fee were exempt from taxation, then the possessor of those properties under lease, namely, the plaintiff here, Rohr Aircraft, legally still owes a tax predicated on a possessory interest of the tax exempt property, so that the defense alleged is by way of equitable settlement, and founded on a long line of cases in California, practically all of which are collected in the case of *Simms vs. County of Los Angeles*, 35 Cal. 2d 302, and the particular items here are discussed by the Court on pages 316 and 317.

The theory involved is that an action to recover taxes [fol. 143] paid is one that is equitable in nature, and in reliance, or based upon the maxim that he who seeks equity must do equity. A property owner that seeks to attack any portion of such a levy must pay to the taxing authority that tax which in equity and good conscience he should have paid. This rule applies equally to those which have paid, or those which taxes—the assessment of which is sought to be enjoined. The argument by the defendants under these circumstances, therefore, is that if the plaintiff is entitled to recover the tax that has been assessed as against the government, it should pay that portion of the tax levy that would have been assessed in those years upon its right to occupy, namely, its possessory interest in tax exempt property.

Now, the exhibit which the County Counsel has prepared, and which has been admitted as Exhibit I—Defendants' I

—contains a summary for these tax years, 1951-2, 1952-3, 1953-4, 1954-5, and 1955-6. There is involved in this action the recovery only of the second half of the fee tax for the year 1951-2, and this is not involved in this action, any portion of the assessment for the year 1955-6. The total of the possessory interest assessment and taxes as computed by the County Assessor for the taxes on the County roll for the year 1951 and '2 is \$18,609—no, pardon me. It is \$8,472. The testimony here, and the tax bills that are attached as exhibits to the complaint, show [fol. 144] that the plaintiff actually paid and is not here seeking to recover the first installment of \$18,609.30. Now, the reason—

Mr. Smith: The second installment, isn't it?

Mr. Wright: The second installment.

Mr. Smith: Is that 18,000?

Mr. Wright: The same figure. The reason the plaintiff is not seeking to recoup for the year '51-52, the amount of the first installment, is that the claim which it filed with the County and with the City Council was filed at a time when the recovery of that was barred.

Then turning to the year '55 and '56, that year is not here involved at all. We are not seeking in any way to recover any portion of the taxes which were levied and/or the sums which were paid under the position of Public Law 388, or otherwise with respect to the years 1955 and '56.

The Court: We will have a recess.

(Whereupon court recessed at 11:00 o'clock A. M. to 2:00 o'clock P. M. of the same day.)

[fol. 145]

San Diego, California,

Monday, December 10, 1956, 2:00 P. M.

Mr. Smith: May it please your Honor, I think we have gone forward. I think I am prepared to state that Defendants' Exhibit J, for identification, it has been stipulated, may be received in evidence subject to these corrections: That following the word "IMP", an abbreviation for improvements, on the face of the exhibit, first page, after

each of the years, respectively, '45-46, '46-47, and '47-48, that this word "IMP", or improvements, that the assessed valuation thereof for each of those three years was \$5,330, this having been ascertained from a visual inspection of the microfilm of the original roll made by counsel for both sides, and in company with the witnesses Shepard and Jacques. Further subject to this correction, that the third entry of this word IMPS, or improvements, after the year —tax year 1947-48, this further correction, that that assessment is of a possessory interest, and with this stipulation:—

The Court: Let me see it. Did you make the corrections?

Mr. Smith: I haven't made it. Just for the record, I refrained from doing it without the Court's approval.

The Court: Well, you make the corrections.

Mr. Smith: I can make those additions.

The Court: Yes. You, both of you, make them there [fol. 146] together.

Mr. Wright: It is so stipulated.

The Court: Well, you see if he is doing it the way you want it.

Mr. Wright: I am sure he will.

Mr. Smith: You can check me, counsel, will you please?

Mr. Wright: Satisfactory.

Mr. Smith: And this may be received in evidence, if the Court please.

The Court: Received.

(The document marked Defendants' Exhibit J, was received in evidence.)

Mr. Smith: Now, I regret to say, your Honor, from the inspection that we were able to make of the assessment rolls and the records and papers available in the Assessor's office, we were not able there and then to identify the exact nature of this improvement assessment for those first two years and the possessory interest for the third, and in that regard I would like to summon Mr. Harold Requa, Chief Deputy Assessor, Assistant Assessor, who made the inspection of the assessment records

in the Assessor's office. I would like to have him take the stand.

The Court: Very well.

HAROLD P. REQUA, called as a witness by and on behalf [fol. 147] of the defendants, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Smith:

Q. You are Mr. Harold P. Requa, Chief Deputy Assessor of San Diego County, and have been for many years last past?

A. Yes.

Q. Mr. Requa, did you in the presence of counsel for the parties here and Mr. Shepard here in the courtroom and Mrs. Jacques of the Redemption Department of the County Auditor's office, during the noon hour, did you make an inspection of the assessment records and class sheets to ascertain the nature of these three assessments for these three tax years in question?

A. Yes.

Q. And what records did you consult?

A. I consulted the class of property record in the Assessor's office and the class sheets or record of improvements as kept in the Assessor's office.

Q. Did you view in the presence of the parties named—did you view also the assessment roll or the microfilm reproduction of that roll in the County Auditor's office?

A. Yes.

Q. And did you satisfy yourself from an inspection of that roll as to the nature of the assessments in these three [fol. 148] years which appeared thereon? I refer to the three years in Defendants' Exhibit J, namely, the years '45-46, '46-47, '47-48, particularly the improvements assessments there designated?

A. Yes.

Q. From your inspection of the assessment roll itself for those years and those assessment records will you

state whether or not the assessment for those first two years on Exhibit J there of improvements—state whether or not it is an assessment in fee of improvements.

A. The record in the assessment rolls for the first two years indicated that it was a fee assessment, and the third year it was an assessment of possessory interest in improvements.

Q. Can you, or were you able to from your inspection of the records—were you able to identify any further the nature of the improvements, or the possessory interest therein?

A. No.

Mr. Smith: Cross examine.

Cross examination.

By Mr. Wright:

Q. Mr. Requa, from your records you referred to, among your records, a clack sheet, or—

A. Class, c-l-a-s-s.

[fol. 149] Q. What do you mean by that?

A. It is a classification. It is the record prepared by—normally by the appraiser in the field, and his computations, and so forth, final computations, making up the assessment.

Q. And on that class sheet did you find any reference to the nature or classification of the property that is the subject on Exhibit J of the assessment for the year 1947-48?

A. No, nothing would indicate the nature of the assessment.

Q. In any of your records were you able to find anything that indicated the nature of the assessment for the year 1947-48?

A. No, no more than it was an improvement assessment, assessment for improvements and—but as far as the detail, what it consisted of, the records as now available do not show what made up the assessment or what the nature of the assessment was.

Q. Now, from this classification sheet are you able to say when the detail was first assembled on that classification sheet?

A. No, I can't tell from it.

Q. Well, would it have been—what was the first year for which that classification sheet was used?

A. May I refer to my records, Judge?

The Court: Yes.

[fol. 150] The Witness: No. There is nothing here that would indicate when the value of \$5,330 was set up. It was apparently carried forward from other valuations indicated, but I cannot tell you from this when it was set up.

Q. When was the first year for which that sheet itself in its entirety was prepared?

A. Part of it was apparently prepared on February 15, 1943, and another date appearing is February 1 of 1945.

Q. Now, under the Assessor's practices, was that same sheet used and carried forward from year to year?

A. Yes. Very often it was carried forward from year to year. That is right.

Q. Can you tell whether this particular sheet was carried forward?

A. No, I cannot.

Q. I direct your attention to some language at the bottom of the sheet. Will you—at the very lowest margin. Will you read it?

A. Yes. That, as I interpret it, says "See 1947, INV", which is our abbreviation for investigation, number 0914, then there is a dash, and "7-18-47", with the name Horton opposite it.

Q. And there is some language after that, is there not?

A. Yes. "L. L. gone, moved off." Then 1955, INV, number 25-538, 7-5-55, Estes, E-s-t-e-s.

[fol. 151] Q. Now, can you tell whether the words L. L. gone, moved off, refer to the 1947 entry or the 1955 entry?

A. No, sir, I cannot determine that.

Q. It could have referred to the '47 entry?

A. Yes, could have, yes. Apparently it is in the same handwriting of that other entry.

Q. Is the ink the same color, in your opinion?

A. Yes, in my opinion it is.

Q. In the practice of the Assessor's office was there a yearly inspection made?

A. No. It is impossible for the Assessor's office to make a yearly inspection of improvements in the County. There are too many.

Q. What is your practice then?

A. The practice is to review them periodically as time permits, and more often if there are some changes in the improvements which are brought to our attention either by the taxpayer or by documents such as building permits, and so forth.

Q. Now, on this classification sheet, Mr. Requa, there is a box in the upper right-hand corner that has—is boxed in bold-faced type. Can you read those figures and the entries that are there with the classifications and the dollar entries? I take it those are assessed values?

A. Yes. Those are assessed values. In the box is new value, \$363,610. Old value, \$312,180. New value, L. L., [fol. 152] \$5,330. Old value, L. L. \$4,910. Now, those are all the improvement valuations.

Q. Improvement valuations?

A. That is right.

Q. Now, this particular class sheet, classification sheet, is made and indicates the property owned by whom?

A. This indicates on this sheet Defense Plant Corporation, looks like number 993, indicating at one time it was assessed to the Defense Plant Corporation, and under that is the lessee, is Rohr Aircraft Company, indicating that the Rohr Aircraft Company also had an interest there.

Q. Now, in making up this assessment roll from this classification sheet the figure—would a separate account be set up for L. L., this figure of \$5,330 that you had, net value, L. L.?

A. Yes. A separate account would be set up for that lease land improvement.

Q. And it is your testimony that that would be the assessed value that was carried into the rolls on Exhibit J?

A. Yes.

Q. Now, for the balance of the assessed—the improvement values, directing your attention to the left-hand column, can you give us those figures and the descriptions that are on there, and what they mean?

A. Factory building number 3, frame and conc, abbrevi- [fol. 153] ation for concrete, 250 by 700, 175,000 square feet, at decimal 95, with a valuation of \$166,250. Six large oil burning units for heat and air conditioning, \$20,350. 72 toilets, 20 urinals, 10 lavatories, \$2,475. Four veneer toilet rooms 25 by 50, ea, meaning each, 5,000 square feet, at decimal 55, \$2,750. 1,200 fluorescent double lights at 8 decimal 25, \$9,900. Switchboard transformer vault, \$5,097. 1,800 sprinkling heads, square feet, and on that line at 3.30, \$5,940. Steel cap, it looks like, to wood monorail, two tons, at \$77, \$154. Three cranes, \$6,600. And there was a total of \$219,506. P. V. C., assessed value, \$216,343. I guess the factor used on that indicated here was .98559. No, I put that decimal point in the wrong place. It doesn't indicate any decimal point here, so it is 98559. Then apparently on the original entry brought forward from another sheet, \$147,270, making a total of \$363,613 as the original entry on that sheet.

Q. And that agrees with the entry in the box in the upper right-hand corner?

A. Yes, on the new value, \$363,610. It is reduced to the nearest decimal.

Q. So on this classification sheet then the items that went into the major improvements were very detailed, would you say, in the entries that describe them?

A. Yes, quite in detail. That is right.

[fol. 154] Q. And do you find any indication as to the nature, or how, or what the item was that was assessed at \$5,330?

A. No, not from the record here.

Q. The sheet is entirely blank as to what that consisted of?

A. I wouldn't say that. It may be a combination of something on this sheet, or something carried forward from another sheet. It says "Brought forward." It might be some combination, or some portion of an assessment on one of the other sheets.

Q. But these entries here and the totals that they arrive at are detailed on this sheet, are they not?

A. That is right.

Q. Now, Mr. Requa, if you were advised that there was on the particular property here which is known as the manufacturing area—if there was a building of 100 feet by 250 feet, and this building was owned in part by the assessee, Defense Plant Corporation, or Reconstruction Finance Corporation, and in part in 1943 or '44, I believe you said this first started, by Rohr Aircraft Corporation, and if you were advised that in 19—latter part of 1945, or the first part of 1946 Rohr Aircraft Corporation took their half of the building off and moved it onto other property not leased from RFC, would you say that that could not have happened?

Mr. Smith: Object to that question; incompetent, irrelevant [fol. 155] and immaterial, conjecture and pure surmise. The assessment roll speaks for itself, and he already quoted what the assessment roll says.

The Court: Well, he is assuming some—

Mr. Smith: Pure conjecture.

The Court: He is assuming facts for the purpose of the question. Now, counsel, you will have to assure the Court that the facts assumed are facts; otherwise it doesn't mean anything.

Mr. Wright: I am asking this for the purpose of testing the makeup of the assessment record. The Assessor has testified that there is no annual inspection, that it is carried forward from year to year.

The Court: Well, if you are asking the question merely to find out what the system is, all right, but you are not trying to prove any facts in this particular case?

Mr. Wright: No, sir; I can't.

The Court: All right. You may inquire as to what the system is.

By Mr. Wright:

Q. Would you say your system is such that that could have happened, and that fact would not have been reflected on your assessment rolls?

Mr. Smith: If your Honor please, I don't believe that is even a proper question, to inquire of the system, to venture into conjecture to this extent. We debated this. [fol. 156] I might say we debated this at some length down there about what they think might have happened, but they have no proof to establish it as a fact, and they have been trying diligently, I will say this for them, to establish this by telephone over a period, and they haven't been able to produce, as far as we know, any evidence of what your Honor said, that it is a fact.

The Court: Well, I am allowing it to show what the system is. Of course, the question whether or not it could have happened would be conjecture, and wouldn't be any basis for decision, but he may find out if that is the system that they use there.

The Witness: Will you give me that question again?

Mr. Wright: Will the reporter read the question?

The Court: Could you restate it? It was probably lost in the shuffle.

By Mr. Wright:

Q. My question, Mr. Requa, is this: Let us assume that a building located on this particular parcel, which is the manufacturing area referred to in this area, a building was owned one-half by Defense Plant Corporation, or RFC, and one-half by Rohr Aircraft Corporation, owned in fee by Rohr Aircraft, their half; that in the latter part of 1945 or the early part of 1946 Rohr Aircraft moved off of this parcel their half of the building. Would, under your system, your class sheet or your other records necessarily show that fact and take it into account for assessment purposes?

A. Well, the record here indicates that this \$5,330 was on the roll in 1945, and it remained on and was not transferred to a leased land improvement according to our records down there until 1947.

Q. Mr. Requa, would you answer my question, please?

Mr. Smith: I submit to the Court he has answered the question, what the assessment rolls showed, and his records.

The Court: He answered definitely as to what the roll showed, but what counsel wants to know is if it was as he suggests, would it be reflected in the work sheet.

The Witness: If an appraiser from the Assessor's office reviewed the property in any particular year and there was a change, it would be reflected in our records, and eventually would be reflected in the posting on the assessment roll, but I can't say that if a particular building down at Rohr Aircraft was moved from one location to another, from our records here, what happened to it. I can't—there is nothing here to indicate what has happened to it.

By Mr. Wright:

Q. Mr. Requa, what were the years, according to your records in front of you, the classification sheet, that inspection was made of the property?

A. Well, the first date appearing is February 15, 1943, [fol. 158] and then there is another date of February 1, 1945. There is also a date here of—

Q. Wait a minute. I am asking about inspections. Are those dates all inspections?

A. I wouldn't know from this record here what, other than the first two. I am confident that the first two here on the sheet would be an inspection, but the other dates as shown on there I am not sure whether there was an inspection. I can't tell. But there were changes and investigations written, and ordinarily on things of this sort we do not make investigations from the office. It is somebody who has actually been on the ground and reviewed the property.

Q. Well, what are the dates then of your inspections or investigations, as you call them?

A. Well, the investigations—there was one in March 17, 1948, by Minnick; on June 23, 1948, by J. B. O., which was John B. Ogden. Then there was another investigation written on March 7, 1949.

Q. Is that all?

A. That is all, excepting those other investigations that I referred to before.

Q. Mr. Requa, do your records show what the total assessment for the year 1944 was on this particular classification sheet?

A. It simply refers to the old values, both for the fee [fol. 159] and for the leased land improvement, but I can't say that it was the year before. It was a previous value. That is all I can tell you from this sheet.

Q. What was that value?

A. The value of the fee, and for the old value for fee was \$312,180, and the old value of leased land improvement was \$4,910.

Q. Now, does it show what happened for the year 1945?

A. No, I can't tell from this, unless this new value of \$363,610 was the '45 value, because that is the date, February 1, 1945, indicated on here, which is the total as shown on the left-hand side. That would be the only—

Q. Now, this assessment classification sheet was also used for subsequent years, was it not?

A. Yes.

Q. Now, what does it show for 1946?

A. Well, apparently from this, the same value of \$363,610.

Q. '47?

A. The same valuation.

Q. There was no reduction in '47?

A. I can't see anything here that would indicate it.

Q. 1948?

A. Apparently it was reduced to \$207,730.

Q. 1949?

A. Looks like—it is blurred here. Looks like \$33,967, [fol. 160] but I think that there is a figure in there that does not show, indicating here, but I cannot make out what the other figure was.

Q. Well, it was reduced, was it not?

A. It—no, apparently there was an increase there, if it is \$339,670, why, it would be an increase from \$207,000.

Q. So that we have one year that there was a substantial reduction. That was 1948?

A. Yes, apparently from this sheet.

Q. Now, Mr. Requa, addressing your attention again to the Defendants' Exhibit J, with particular reference to the improvement assessments that were valued respectively

for all those years at \$5,330, and you say from this record it would appear that for the previous year the value was \$4,910, do your records indicate, or can you tell from your inspection of the classification records the assessment roll, the roll that you looked at, your master property, and all the records at your disposal, would you say that those three years of assessments were assessments of the same property?

A. Well, I can't tell. I can't tell that. I have no way of knowing. I have no way of telling.

Q. Well, would you say with reference to the classification sheet there that the net value—is that "L L"?

A. Yes.

[fol. 161] Q. Which means lease improvements—leased improvement—

A. Yes.

Q. Assessed at \$5,330. Would you say from that sheet that is the same property as was assessed in the year before for \$4,910?

A. No, I can't tell from these records.

Q. What does the entry—how is it identified?

A. Well, you mean the \$4,910?

Q. Yes.

A. It is just old value.

Q. Old value for what?

A. Well, an improvement value which was on our records the previous year.

Q. And does it have any relation at all to the figure of \$5,330?

A. I don't know that it has.

Q. Mr. Requa, from an examination of all of the records at your disposal could you say that this assessment possibly could have been for an improvement owned by Rohr in fee and located on the manufacturing area during the years in question?

A. Well, the assessment was to Rohr Aircraft Company. That is all I can say on it.

Q. Could it have been a building owned by Rohr Aircraft and located on this particular property?

[fol. 162] A. Apparently that is what the roll indicated for the two years. It was owned by Rohr and the third

year it was leased land improvement located on that property, on that same land.

Q. Mr. Requa, did you find any record of its having continued on the property for the year 1948-9—I think the last year that is assessed here is 1947-48. Yes. Do you find any record of an assessment similar to this for 1948-9?

A. No. The master property record that I looked at had a zero opposite that 5,330 for the year 1948-49, indicating that something had happened to it.

Q. That it was no longer in existence on this particular property?

A. On that property, yes.

Mr. Wright: I have no further questions.

Redirect examination.

By Mr. Smith:

Q. Mr. Requa, there is reference made here in cross examination to your class sheet and investigation on the 18th of July, 1947, by one Horton, and an investigation number 5914. Did you go to your records and have one of your deputies check that investigation to see whether or not it was available as a source of information?

A. Yes. The deputy reported that the investigations [fol. 163] for the year 1947 had been destroyed as permitted by law.

Q. You keep those work sheets four years and then are permitted by law to destroy them, is that right?

A. That is right.

Q. So that his investigation sheet is not available, is it?

A. No.

Mr. Smith: That is all.

Mr. Wright: No questions.

The Court: You are excused.

(Witness excused.)

Mr. Wright: If the Court please, I have a few questions to ask of Mr. Shepard.

S. W. SHEPARD, recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect examination.

By Mr. Wright:

Q. Mr. Shepard, was there any improvement—

The Court: Are you finished with Mr. Requa?

Mr. Wright: Yes, sir.

By Mr. Wright:

Q. Mr. Shepard, was there any improvement located on [fol. 164] the manufacturing area that was owned in fee by Rohr Aircraft Corporation in 1945?

A. By "owned in fee" you mean owned? Yes, Rohr Aircraft Corporation owned an addition to a building that was known as the maintenance building at that time. The maintenance building was the maintenance building owned by Defense Plant Corporation, was 50 by 250, and Rohr Aircraft Corporation, with the permission of Defense Plant Corporation, constructed a 50 by 250-foot addition to it, and Rohr Aircraft Corporation retained title to that addition.

Q. And paid no rent on that?

Mr. Smith: Just a minute. I move that answer be stricken for purposes of objection.

The Court: It may be stricken.

Mr. Smith: I want to object to that question as incompetent, irrelevant and immaterial; no showing that it applied to either of the subject properties. No foundation laid.

The Court: Sustained.

Mr. Wright: May I have the Court's ruling?

The Court: Objection sustained.

Mr. Wright: May I make one comment? I asked Mr. Shepard if, and part of my question was whether this building was located on the manufacturing area here involved.

Mr. Smith: I am sorry, counsel. I didn't hear that.
[fol. 165] The Court: All right, go ahead then. Manufacturing area?

Mr. Wright: On the manufacturing area.

The Court: As I understand his statement, there was a building there, and by permission of the governmental agency Rohr was allowed to add 50 feet to it.

Mr. Smith: That is all right, if it is on the manufacturing area. I didn't get that part of the question. I am sorry.

By Mr. Wright:

Q. Mr. Shepard, what thereafter happened to that improvement so owned by Rohr?

A. It was removed by Rohr and relocated on the Rohr-owned premises north of H Street.

Mr. Wright: No further questions.

Recross examination.

By Mr. Smith:

Q. When did that removal take place, if you know?

A. It was either in the fall of 1945 or the spring of 1946.

Q. Do you know that of your own knowledge?

A. Yes, sir, but I cannot place it exactly to the month.

Mr. Smith: That is all.

The Court: Was the half taken off, or the whole?

[fol. 166] The Witness: The half was taken off, sir. The Rohr-owned half was taken off.

Mr. Smith: That is all.

(Witness excused.)

• • • • •

[fol. 255] Reporter's Certificate (omitted in printing).

[fol. 256]

PLAINTIFF'S EXHIBIT 2**UNITED STATES OF AMERICA
SURPLUS PROPERTY BOARD****DECLARATION OF SURPLUS REAL PROPERTY**

(In the continental United States, its Territories and possessions) to the Surplus Property Board,
Washington 25, D. C.

IMPORTANT.—Instructions for completing this form
appear on reverse.

1. From:

Reconstruction Finance Corporation, Successor in title
to Defense Plant Corporation
Washington 25, D. C.

2. Location of Property (Attach Map)
Chula Vista, California**3. Representatives to Contact**
Hector C. Haight, Manager
Reconstruction Finance Corporation
316 Pacific Mutual Building, Los Angeles 14, Calif.**4. Use of Property When Acquired**
Vacant industrial land.**5. Opinion of Best Future Use**
Light and medium manufacture and assembly facilities
easily connectable.**6. General Description of Property**

This site, on which eleven buildings have been constructed, is located in the city of Chula Vista, California, adjacent to the San Diego Bay area and situated between "G" Street and "J" Street. This property is located $\frac{1}{2}$ mile west of main coastal highway No. 101, which is reached by three cross streets, and is served by a siding from Coronado Branch, San Diego and Arizona Eastern Railway (Southern Pacific subsidi-

ary). An uncovered loading platform serves the siding at one of the warehouses. San Diego harbor is 10 miles from Plancor.

7. Date
May 29 1946
8. Reporting Agency No.
Plancor 993
9. Surplus Property Board No.
R—Calif 34
10. Disposal Agency No.
11. Approximate Area
3.21 (lease)
32.05 Acres (fee)
12. Cost of Property

Acquisition	\$ 24,313.65
Betterments	\$2,113,427.54
Total	<u>\$2,137,741.19</u>
13. Proceeds: If "Reimbursable", Give Symbol and Title of Appropriation or Government Corporation.

INDEX

No.	1	APPENDIX	SPB-5
	2	"	1 Vicinity Map
	3		2 Description of Land
	4		2-B " " "
	5		2-C " " "
	6		2-D " " "
	7		4 Plot Plan
	8-11		5 Description of Betterments
	12		6 Title Policy #136220
	13		6-A Counsel Opinion
	14		6-B Title Policy #339301
	15		6-C Counsels Opinion
	16		6-D Title Policy #340153

17	6-E	Counsels Opinion
18	6-F	Title Policy #345139
19	6-G	Counsels Opinion
20	7	SPB-1

DO NOT FILL IN

Forwarded by SPB to:

Date

Initials

14. Authorized by

RICHARD C. DYAS
Assistant Chief, Real Estate & Taxation Section
Office of Defense Plants

By /s/ **RICHARD C. DYAS**

(Stamp)
 Jun 20, 1946
 Received
 Filing Dept.

N.B. This declaration is subject to an agreement dated May 15, 1943, between Rohr Aircraft Corporation and DPC, whereby Rohr Aircraft Corp. may construct a lean-to on the property of DPC: also a spur-track agreement dated February 27, 1946 between Rohr Aircraft Corp. and RFC, which may be cancelled on ten-days notice in the event of the sale of the property.

[fol. 257]

INSTRUCTIONS FOR PREPARING FORM SPB-5**GENERAL**

Form SPB-5 will be used by all owning agencies for declaring surplus real property, located in the United States, its Territories and possessions, to the Surplus Property Board.

Form SPB-5 will be filed in quadruplicate, with supporting exhibits in triplicate, at the Surplus Property Board, Washington 25, D. C.

Real property declared surplus on one Form SPB-5 will be confined to property at a single location.

Personal Property. All declarations of personal property declared surplus in conjunction with real property shall be filed with the Board on Form SPB-1, in triplicate, and accompany the declaration on Form SPB-5. In completing Form SPB-1, the owning agency will not fill in Block 1 (Disposal Agency) of that form. This block will be filled in later by the Surplus Property Board, or by the disposal agency to which the declaration of real property on Form SPB-5 is assigned.

Attachments and Exhibits. The detailed instructions for certain blocks on Form SPB-5 request that supporting schedules or more complete data be attached. Such supporting data may be consolidated in one complete survey of the property, in which case, reference will be made in the particular block on Form SPB-5 to the page or tab of the survey where the detailed information may be found. If separate exhibits or attachments are provided, each will be clearly identified with the corresponding block number of Form SPB-5. In either case, however, each block will be filled out as stated in the Detailed Instructions.

After the owning agency receives notice that a declaration on Form SPB-5 has been forwarded by the Board to a disposal agency, communications from the owning agency concerning that declaration should be addressed to that disposal agency.

Withdrawals or Corrections. Form SPB-5 will be used by the owning agency for corrections, or requesting the withdrawal of real property previously declared surplus. Insert the word "withdrawal" or "correction" in the top margin of the form. The same reporting agency serial number appearing in Block 8 on the original declaration will be used on the form used for requesting a withdrawal or correction. Corrected or adjusted information will be underlined to permit ready identification of the new data.

If a request for withdrawal covers *all* of the property included in a previous declaration, it is not necessary to provide the information required by Blocks 4-6, or 11-13. If a request for withdrawal covers only *part* of the property previously declared, the owning agency will submit a statement of justification and furnish all the information on that portion of property being withdrawn, as required by Form SPB-5, except that Blocks 4, 5 and 13 need not be completed. Withdrawals or corrections on Form SPB-5 will be filed in quadruplicate with the Surplus Property Board, unless the owning agency has received notice that the original declaration has been forwarded to a disposal agency by the Board. If the owning agency has received such notice, it will send one copy of Form SPB-5 and exhibits (if required) to the Surplus Property Board and two copies to the disposal agency to which the original declaration was forwarded by the Board.

DETAILED INSTRUCTIONS

Block No.:

1. Insert the name and complete address of the office transmitting the declaration to the Surplus Property Board.
2. Insert the county and State in which the property is located. If it is urban property, give the city and street address; if rural property, give the general location of the property, for example "on U. S. Route No. 1, about 7 miles east of (city or town)." Attach an area map showing the location of the property, and specify the township and range.
3. Insert the names, addresses, and telephone numbers of the principal individuals with whom the disposal agency should communicate to obtain additional information on the property.
4. Describe the use being made of the property at the time it was acquired by the Government and attach complete details.

5. Describe the highest and best future use of the property, in the opinion of the owning agency, and attach more detailed information or disposal plans that the agency may have or has been requested to furnish.

6. In the available space, give a general description of the real property, describing separately the type and condition of the land, betterments and buildings and, in the case of industrial real property, the kind and number of machines, equipment, and portable tools. The general description should be supported by completely detailed information accompanying the form, including among other items, the full legal description of the property; plat of the land; plot plan showing buildings on the site; the number, size, construction, and condition of each principal structure; their dates of construction; the names and addresses of architect, engineer, and prime contractor; the name of the agency, if acquired from a Federal agency; the name and latest known address of former owner(s); the dates of acquisition; tract numbers keyed to the plot plan; etc. The supporting schedule should provide the disposal agency all the descriptive information available to the owning agency which would be helpful in accomplishing disposal of the property.

Note: An attorney's certificate or report on the Government's legal title to the property will be submitted with the above exhibits, if it can be obtained by the time Form SPB-5 is filed. If not, such report or certificate will be furnished as soon thereafter as possible. Two copies will be sent to the disposal agency to whom the declaration was forwarded by the Board and one copy will be sent to the Board; if the owning agency has not received notice of the name of the disposal agency, all three copies will be sent to the Board.

7. Enter the date on which the declaration is signed by the authorizing official.

8. Enter the serial number assigned by the owning agency to identify each declaration.

9 and 10. Do not fill in.

11. Insert the approximate area of the real property expressed in acres or square feet.

12. After "acquisition" enter the original cost (actual or estimated) to the Government, including land and buildings purchased at the time of the acquisition; after "betterments" enter the cost (actual or estimated) to the Government of plants, buildings, utilities, roads, etc., constructed or placed on the land. In a supporting schedule the cost to the Government of each major classification, construction or betterments. The cost should include the amounts which have been obligated although not disbursed.

13. If the net proceeds from the sale or transfer of surplus real property are reimbursable pursuant to Section 30 (b) of the Surplus Property Act of 1944, give the symbol and title of the appropriation to be credited, or the name and address of the Government corporation to receive the proceeds.

14. The authorized reporting official will enter his signature below (original only) and his name and title will be typed in above (all copies).

[fol. 258]

DEFENDANTS' EXHIBIT "H"

Quitclaim Deed

KNOW ALL MEN BY THESE PRESENTS:

That RECONSTRUCTION FINANCE CORPORATION, a corporation organized and existing under and by virtue of the laws of the United States of America, having its principal office at 811 Vermont Avenue, N. W. in the City of Washington, District of Columbia, Grantor, (which corporation has succeeded, as provided by Public Law 109—79th Congress, approved June 30, 1945, to all of the rights and assets of Defense Plant Corporation) in compliance with the Federal Property and Administrative Services Act of 1945, as amended, and Public Buildings Service Circular No. 1 dated March 8, 1950, and for other good and valuable consideration, the receipt of which is hereby acknowledged,

does hereby remise, release, assign and forever quitclaim unto the UNITED STATES OF AMERICA, Grantee, and its assigns, all of Grantor's right, title and interest in and to the following described premises situate in the County of San Diego, State of California, to-wit:

PARCEL No. 1

A tract or parcel of land which is more particularly described in a grant deed from Rohr Aircraft Corporation to Defense Plant Corporation dated October 22, 1942, recorded in Book 1423, Page 421, of the official records of San Diego County, California.

PARCEL No. 2

A tract or parcel of land which is more particularly described in a deed from Rohr Aircraft Corporation to Defense Plant Corporation dated September 2, 1943, which is recorded in Book 1550, Page 304, of the official records of San Diego County, California.

PARCEL No. 3

A tract or parcel of land which is more particularly described in a deed from Rohr Aircraft Corporation to Defense Plant Corporation dated October 28, 1943, recorded November 3, 1943 in Book 1582, Page 232, of the official records of San Diego County, California.

PARCEL No. 4

A tract or parcel of land which is more particularly described in a deed from Rohr Aircraft Corporation to Defense Plant Corporation dated January 24, 1944, recorded February 4, 1944, in Book 1626, Page 238, of the official records of San Diego County, California.

together with those rights and easements acquired by (a) an instrument dated October 21, 1942, recorded in Book 1434, Page 58, of the official records of San Diego County, California, (b) an instrument dated October 22, 1942, recorded in Book 1433, Page 104, of the official records of [fol. 259] San Diego County, California, (c) an instrument dated October 22, 1942, recorded in Book 1435, Page 36, of the official records of San Diego County, California, (d) an

instrument dated January 10, 1944, recorded in Book 1615, Page 437, of the official records of San Diego County, California, (e) an instrument dated June 2, 1944, which is recorded in Book 1763, Page 32, of the official records of San Diego County, California, and (f) an instrument dated April 27, 1945, which is recorded in Book 1876, Page 73, of the official records of San Diego County, California.

Also, together with the leasehold interest in approximately 3.21 acres of land, which land and leasehold interest are more particularly described in that certain lease from the City of Chula Vista to Defense Plant Corporation dated January 14, 1944, recorded April 14, 1944, in Book 1664, Page 213, of the official records of San Diego County, California.

Also, together with all of Grantor's right, title and interest in and to all buildings, structures and fixtures and all other improvements of whatsoever nature now on or hereafter placed upon said premises or any portion thereof; also all of Grantor's right, title and interest in and to all easements, rights, privileges and benefits now or hereinafter incident or appurtenant to the said premises or any portion thereof; and also, with the tenements, hereditaments and appurtenances thereunto in any wise belonging.

TO HAVE AND TO HOLD the same unto said Grantee and its assigns forever.

IN WITNESS WHEREOF, Reconstruction Finance Corporation has caused this instrument to be duly executed by its Treasurer this 17th day of March, 1955.

RECONSTRUCTION FINANCE CORPORATION

By /s/ W. C. BECK, JR.

W. C. Beck, Jr., Treasurer

(Signature Illegible)
Secretary

[R. F. C. SEAL]

[fol. 260] UNITED STATES OF AMERICA)
) SS.
 DISTRICT OF COLUMBIA)

On the 17th day of March, 1955, before me came W. C. Beck, Jr., to me known, who being by me duly sworn did depose and say that he resides at 4801 Massachusetts Avenue, N. W., Washington, D.C.; that he is the Treasurer of Reconstruction Finance Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Secretary of the Treasury of the United States, successor to the Board of Directors of said Corporation, pursuant to section 10 of the Reconstruction Finance Corporation Act [15 U.S.C.A. Sec. 609], as amended by Public Law 438, approved June 29, 1954, and that he signed his name thereto by like order.

[Notarial Seal]

CHARLES J. BUETTNER
 Notary Public

My commission expires: February 29, 1956

[fol. 260a] The foregoing instrument is a full, true and correct copy of the original file in this office under File #59973 Book 5634 Page 66

Attest November 15th 1956

ROGER N. HOWE, County Recorder, in and for the County of San Diego, State of California.

By /s/ HENRIETTA ZERVAS, Deputy
 Henrietta Zervas

[fol. 261]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

L.A. 24556

 ROHR AIRCRAFT CORPORATION, Plaintiff and Appellant,

VS.

 COUNTY OF SAN DIEGO, a Body Corporate, and CITY OF
 CHULA VISTA, a Municipal Corporation, Defendants and
 Respondents.

OPINION

Plaintiff, Rohr Aircraft Corporation, sought to recover property taxes paid to the defendants County of San Diego and City of Chula Vista under allegedly illegal assessments. From a judgment denying a refund, plaintiff appeals.

During the years for which recovery is sought, plaintiff occupied the land in question under a lease obligating it to pay "all taxes, assessments and similar charges . . . upon the leased premises." Plaintiff's lessors were the "Reconstruction Finance Corporation . . . and the United States of America, both acting by and through the General Services Administrator." While plaintiff concedes the taxability of its possessory interest, it maintains that taxes [fol. 262] levied upon the realty itself were unlawful because of the general rule that lands owned by the United States of America or its instrumentalities are immune from state and local taxation. (*Clallam County v. United States*, 263 U.S. 341; *Van Brocklin v. State of Tennessee*, 117 U.S. 151.) Defendants argue, however, that the property was owned by the Reconstruction Finance Corporation, that Congress had waived the tax immunity of such property (*Reconstruction Finance Corporation Act*, ch. 166, § 8, 61 Stat. 205 (1947), as amended, 15 U.S.C.A. § 607 (1948) (formerly *Reconstruction Finance Corporation Act*, ch. 8, § 10, 47 Stat. 9 (1932))), and that the assessments were therefore lawful.

In 1942 and 1943, plaintiff's predecessor, also named Rohr Aircraft Corporation, conveyed the property in question to the Defense Plant Corporation, a subsidiary of the Reconstruction Finance Corporation (hereinafter sometimes referred to as the RFC). The Defense Plant Corporation improved the property and leased it to plaintiff's predecessor for the production of aircraft parts and assemblies during World War II. On July 1, 1945, the Defense Plant Corporation was dissolved and all its assets were transferred to the RFC by operation of law. (Act of June 30, 1945, ch. 215, 59 Stat. 310, 15 U.S.C.A. § 611, n. (1948).) In October, 1945, the lease was terminated at Rohr's request, and there was evidence that the company [fol. 263] then vacated the premises. On May 29, 1946, the RFC declared the property to be surplus to its needs and responsibilities pursuant to the Surplus Property Act of 1944. (§ 11, 58 Stat. 769.) Later in the year the War Assets Administration, a federal instrumentality designated as a surplus property disposal agency (see Surplus Property Act of 1944, ch. 479, § 10(a), 58 Stat. 769), accepted possession and control of the property pending its ultimate disposition. No deed was executed at that time, and legal title remained in the RFC. The functions of the War Assets Administration were subsequently transferred to the General Services Administration. (Federal Property and Administrative Services Act of 1949, ch. 388, § 105, 63 Stat. 381, 5 U.S.C.A. § 630c (Supp. 1958).)

In May, 1948, the former Rohr Aircraft Corporation began renting portions of the property on a month-to-month basis, and in September, 1949, its successor, the plaintiff, obtained the above-mentioned lease of the entire property. In accordance with its terms, plaintiff paid taxes on the land pursuant to defendants' assessments against the RFC as record owner for the fiscal years 1951-1952 through 1954-1955. In 1955 the RFC conveyed its interest to the United States.

[fol. 264] Plaintiff's right to recover the amounts so paid depends on whether the leased premises were immune from local taxation or whether Congress had waived the federal immunity. The waiver in question provides, "[A]ny real property of the [Reconstruction Finance] Corporation . . .

shall be subject to . . . county, municipal or local taxation to the same extent according to its value as other real property is taxed." (Reconstruction Finance Corporation Act, ch. 166, § 8, 61 Stat. 205 (1947), as amended, 15 U.S.C.A. § 607 (1948) (formerly Reconstruction Finance Corporation Act, ch. 8, § 10, 47 Stat. 9 (1932)).) Before the RFC's surplus property declaration, this statute unquestionably subjected the land to local taxes. (Reconstruction Finance Corp. v. Beaver County, 328 U.S. 204; Boeing Aircraft Co. v. Reconstruction Finance Corp., 25 Wash. 2d 652 [171 P. 2d 838], appeal dismissed and cert. denied, 330 U.S. 803.) Its taxable status was not changed by the mere declaration that it was surplus to the RFC's needs and responsibilities. (Board of County Com'rs of Sedgwick County v. United States, 105 F. Supp. 995, 1001.) Thus the sole question for determination is whether the land ceased to be "real property of the" Reconstruction Finance Corporation when control and responsibility were subsequently transferred to the War Assets Administration. The identical question has been presented in two previous cases.

[fol. 265] In Board of County Com'rs of Sedgwick County v. United States, supra, 105 F. Supp. 995, the Court of Claims held that RFC surplus property was immune from local taxes once the War Assets Administration had accepted control of and accountability for the property. The court reasoned that "the waiver of constitutional immunity from taxes . . . was undoubtedly intended to apply to that real property of the corporation held by it in the performance of the duties and responsibilities imposed upon it by law. But by the . . . declaration of the property as surplus . . . the RFC declared that the property was surplus to its 'needs and responsibilities', and by . . . acceptance [of the War Assets Administration] was divested of all control and responsibility. At no time after the acceptance by the WAA . . . did the RFC or any of its employees have physical possession, control, or custody of the property. It had neither the use nor the right to use the property. It could not even withdraw the declaration of surplus property without the approval of the War Assets Administrator." (Id. at 1001.) Although the court recognized that the RFC continued to be the "owning agency" within the

meaning of the Surplus Property Act (§ 3 (b), 58 Stat. 767), it viewed the RFC as holding no more than "a bare legal title for the use of the United States." (105 F. Supp. at 1001; see *United States v. Shofner Iron & Steel Works*, 9 Cir., 168 F. 2d 286.) On the basis of this reasoning and [fol. 266] the assumption that the RFC omitted to transfer title merely "as a matter of convenience to the Government and to minimize actual paper work and expense" (105 F. Supp. at 1001), the court concluded that "the purpose of the waiver provision had been fully served when the property passed to the control of the WAA." (Id. at 1001-1002.)

In *Continental Motors Corporation v. Township of Muskegon*, 346 Mich. 141 [77 N. W. 2d 370], the Supreme Court of Michigan rejected the reasoning of the *Sedgwick* case and came to an opposite conclusion on similar facts. The court declared that the Congressional waiver of immunity "was intended to prevent prejudice to local economic conditions" and that the reason for the waiver persisted during the disposal process where the use of the property remained unchanged. (Id. at 149-150.) We are in accord with the result reached by the Supreme Court of Michigan in the cited case.

In providing for taxation of "real property of the" RFC, Congress must have intended to insure that RFC ownership of property would not withdraw important revenue sources from the local tax rolls. By enacting the Surplus Property Act of 1944 (58 Stat. 765), Congress expressed its desire to maintain competition, "to avoid dislocations of the domestic economy," and "to prevent . . . unusual and excessive profits being made out of surplus property." (58 Stat. [fol. 267] 766.) These objectives are inconsistent with the asserted intent that RFC-surplus property should be immune from taxation during the disposal process. While some of that property was ultimately to be transferred to tax-exempt entities such as federal agencies, local and state governments, and charitable organizations (58 Stat. 770-772), it was also anticipated that much of it would be returned to private hands. (58 Stat. 773-779.) Since RFC property was taxable at all times before it became surplus to the needs of the RFC, and since much of that property

was destined to be sold to private persons and thereafter to be subject to local taxes, it cannot be held that Congress intended such property to be immune from taxation during the disposal process. Moreover, it appears that the disposal agencies, acting under similar reasoning, left legal title in the RFC not merely as a "matter of convenience," as the Court of Claims assumed, but for the sole purpose of continuing the tax immunity waiver until final disposition of the property. (See 32 Decs. Comp. Gen. 164, 166; Hearings on Amendment to the Federal Property and Administrative Services Act of 1949, as Amended, Before the House Committee on Government Operations, 84th Cong., 1st Sess. 126.) We conclude that the property did not become immune from local taxes until legal title was transferred to the United States in 1955, and that plaintiff is therefore not entitled to a refund of the amounts paid. (Cal. Const., [fol. 268] art. XIII, § 1; see *Boeing Aircraft Co. v. Reconstruction Finance Corp.*, supra, 25 Wash. 2d 652, 663 [171 P. 2d 838, 845], appeal dismissed and cert. denied, 330 U.S. 803.)

Plaintiff contends, however, that we must reverse the judgment on the authority of the *Sedgwick* case, supra, 105 F. Supp. 995, even though we disagree with the decision of the Court of Claims. It is true that we are bound by interpretations of federal statutes by the United States Supreme Court. (U.S. Const., art. VI, § 2.) In our opinion, however, the decisions of the lower federal courts on federal questions are merely persuasive. (See *Stock v. Plunkett*, 181 Cal. 193, 194-195; *Continental Motors Corp. v. Township of Muskegon*, supra, 346 Mich. 141 [77 N.W. 2d 370]; *State ex rel. St. Louis, V. & M. Ry. v. Taylor*, 298 Mo. 474, 489-490 [251 S.W. 383, 387], aff'd, 266 U.S. 200; Note, 147 A.L.R. 857; 21 C.J.S. Courts § 206, p. 365.) Although the parties have cited no decision of the United States Supreme Court directly passing upon the point, plaintiff argues that in any event our own decisions require us to follow the Court of Claims. Plaintiff relies on general statements to the effect that this court must accept the construction placed upon federal statutes by the federal courts. Those statements were made, however, either in the light of controlling United States Supreme Court decisions (*In re Hallinan*,

43 Cal. 2d 243, 250-252; *Mackenzie v. Hare*, 165 Cal. 776, [fol. 269] 779, 785) or in cases where this court had no disagreement with the position taken by the lower federal courts. (*Penn. R.R. Co. v. Midstate etc. Co.*, 21 Cal. 2d 243, 245; *Dougherty v. California Kettleman, etc.*, 9 Cal. 2d 58, 88-89.)

Where lower federal court precedents are divided or lacking, state courts must necessarily make an independent determination of federal law. Any rule which would require the state courts to follow in all cases the decisions of one or more lower federal courts would be undesirable, as it would have the effect of binding the state courts where neither the reasoning nor the number of federal cases is found persuasive. Such a rule would not significantly promote uniformity in federal law, for the interpretation of an act of Congress by a lower federal court does not bind other federal courts except those directly subordinate to it. (*United States v. Cincotta*, 146 F. Supp. 61, 62; *General Electric Co. v. Refrigeration Patents Corp.*, 65 F. Supp. 75, 81; *United States v. St. Clair*, 62 F. Supp. 795, 797; see also Rule 19, Revised Rules of the Supreme Court, § 1(b).) We therefore conclude that the courts of this state may decline to follow the decision of the Court of Claims, as the reasoning of that decision is not persuasive. [fol. 270] The judgment is affirmed.

Spence, J.

We concur: Gibson, C.J., Shenk, J., Traynor, J.,
Schauer, J.

[fol. 271]

DISSENTING OPINION

I dissent. I would reverse the judgment for the reasons stated by Mr. Justice Coughlin in the opinion prepared by him for the District Court of Appeal in *Rohr Aircraft Corp. v. County of San Diego*, 164 A.C.A. 94, 330 P. 2d 291.

McComb, J.

[fol. 272]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

L.A. No. 24556

 ROHR AIRCRAFT CORPORATION

v.

COUNTY OF SAN DIEGO et al.

 ORDER DENYING REHEARING—April 15, 1959

Appellant's petition for rehearing Denied.

McComb, J. is of the opinion that the petition should be granted.

Gibson, Chief Justice.

[fol. 273]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L.A. 24556

 ROHR AIRCRAFT CORPORATION, Appellant,

v.

COUNTY OF SAN DIEGO, a body corporate, and CITY OF CHULA VISTA, a municipal corporation, Appellees.

 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 12, 1959

I. Notice is hereby given that Rohr Aircraft Corporation, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California, entered in this action on March 17, 1959, affirming the judgment of the Superior Court of the State of California, in and for the

County of San Diego, dismissing the action in the above matter brought by Appellant.

This appeal is taken pursuant to 28 U.S.C., Section 1257 (2).

II. The Clerk will please prepare a transcript of the [fol. 274] record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. The Clerk's transcript of the proceedings had in the Superior Court of the State of California, in and for the County of San Diego, in Action No. 200839, which transcript has heretofore been lodged with the Supreme Court of the State of California, and which includes the following:

1. Judgment Roll, including Complaint and all exhibits attached thereto; Answer of Defendant County of San Diego; Answer of Defendant City of Chula Vista; Stipulation of the parties, dated November 20, 1956; Findings of Fact, Conclusions of Law; Judgment; Notice of Appeal to the Supreme Court of the State of California, dated February 20, 1957; Notice and Request for Reporter's and Clerk's Transcript, dated February 20, 1957.

2. Clerk's Minutes.

B. Reporter's transcript of the proceedings had in the Superior Court of the State of California, in and for the County of San Diego, in Department No. One thereof, before Hon. Arthur L. Mundo, Judge, in Action No. 200839 (erroneously designated in said Reporter's transcript as Proceeding "No. 200837"), as transcribed and reported by Norman K. Peterson, and heretofore lodged with the Supreme Court of the State of California.

C. Of the original exhibits heretofore designated by appellant, pursuant to the provision of Section 10(b) of the Rules of Appeal of the Supreme Court of the

State of California, for transmission to the reviewing court from the trial court, the following:

Plaintiff's (Appellant's) Exhibit No. 2, being a photostat of Form SPB 5, which is a "Declaration [fol. 275] of Surplus Property," executed by Reconstruction Finance Corporation.

III. The following questions are presented by this appeal:

A. Where the Congress has, by express statute, waived the Constitutional immunity of the Federal Government from local tax with respect to a property of a particular subsidiary (i.e., property of the Reconstruction Finance Corporation, 15 U.S.C. 607), and where the Congress has thereafter provided for the effectual transfer of such property to another agency created by it (War Assets Administration (Surplus Property Act of 1944, 58 Stat. 765, 50 U.S.C.A. Appendix, Sections 611, et seq.; Federal Property and Administrative Services Act of 1949, 63 Stat. 378, 41 U.S.C.A., Sections 201, et seq.)) and has not expressly extended the waiver of tax immunity to encompass the property of such new owning agency, are taxes imposed by a county, municipality, and other local taxing authorities, levied after the transfer accomplished under the congressionally-prescribed mechanics, valid (*M'Culloch v. The State of Maryland*, 4 Wheat. 316, 4 L. Ed. 579)?

B. Is it necessary for the Federal Government, in providing for transfers of federally-owned property, as between its various corporations and agencies, to comply with the common-law concepts of conveyancing, so that such a transfer cannot occur in the absence of a formal deed, recorded in compliance with local law?

C. If the answer to the question posed in Paragraph B above is negative, does the judgment of a state court, inferentially requiring compliance with local law, violate the supremacy clause of the Constitution of the United States (Article I, Section 8, Clause 18)?

[fol. 276] D. Can a state, by imposing its own views as to the requirements of property transfers between agencies

of the Federal Government, notwithstanding the express provisions of the Federal Constitution (Article IV, Section 3, Clause 2), defeat the Constitutional immunity from local taxation which was waived by the Congress with respect to the original agency, but not with respect to the transferee agency?

Dated at San Diego, California, this 11th day of June, 1959.

Glenn & Wright, By Leroy A. Wright, Attorneys for
Appellant, Rohr Aircraft Corporation, 1434 Fifth
Avenue, San Diego 1, California.

Proof of Service (omitted in printing).

[fol. 277]

SUPREME COURT OF THE UNITED STATES

No. 295, October Term, 1959

ROHR AIRCRAFT CORPORATION, a California Corporation,
Appellant,

VS.

COUNTY OF SAN DIEGO, a Body Corporation, and CITY OF
CHULA VISTA, a Municipal Corporation.

ORDER POSTPONING CONSIDERATION OF JURISDICTION UNTIL
HEARING ON MERITS—October 19, 1959

Appeal from the Supreme Court of the State of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits and the case is transferred to the summary calendar.

October 19, 1959